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MUNICIPAL GOVERNMENT

IN CANADA

EDITED BY

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SOMETIME LECTURER IN POLITICAL ECONOMY

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EDITOR'S INTRODUCTION

Remarkably little has been written on the municipal system of Canada. For a number of years after confederation much of the thought of political writers was given to the constitution, but most of it was devoted to the division of powers *between* the Dominion and the provinces, comparatively little to the distribution of powers *within* the provinces. The explanation is not far to seek. The pre-confederation systems of local government were continued, and as population grew slowly there was little occasion to investigate them. The past ten or twelve years, however, have seen population increasing rapidly, and the sphere of municipal activity widening. The magnitude and the complexity of local interests are at length compelling attention to the field that it was formerly possible to pass lightly over. One might even say that the past unquestioned supremacy of provincial over municipal interests may not long remain unchallenged. Thus it is that many localities are already feeling that the simple organization of the past is unequal to the strain of modern municipal activity. The near future should see many important changes in the system and methods of conducting municipal business.

The present volume passes in review the main features of municipal development in the several provinces. The papers forming it have been contributed during the past five years and have appeared in four separate numbers. In the majority of instances they are written by men personally familiar with local conditions. A few additional notes will be found in the addenda.

The account given is not exhaustive. It is a discussion of those matters on which data are available and which are indigenous or sufficiently important to repay examination. It is necessarily factual. No attempt is made to set up generalizations as to the discovery in local laws or practices of regard for certain traditional political principles. To undertake that would be at present highly venturesome, perhaps fantastic. Canada is a country in the making, and the influences on day-to-day legislation are too chaotic and utilitarian. But it is just this

practical character which adds to the interest and value of a review of political institutions in a young commonwealth.

From the material presented two or three outstanding features will be remarked. In the first place it will be noticed that municipally Canada falls roughly into three divisions, (1) the Maritime Provinces, (2) Quebec, and (3) Ontario and the West. But the large number of amending Acts passed each year is gradually bringing about growing similarity in municipal law and organization, Ontario serving most frequently as model. It will be noticed further that the municipal system is neither English nor American, but like the first general municipal Act of Ontario, a combination of both with modifications suited to local conditions. Not sufficient time has elapsed, nor have the requirements been severe enough to develop as yet a distinct Canadian type. It will be noted also that the municipal machinery is adapted to a modest range of local activity rather than to the heavier duties that already are being thrust upon it by modern demands on municipal government. Its deficiencies form the basis for certain suggestions submitted in the closing paper. Of particular developments the evolution of the Board of Control and, in Ontario, the creation of a local government board are perhaps the most interesting. From the bibliography given it will be noticed that Canadian municipal literature is very scattered and miscellaneous. Mention must be made here of the fact that since the earliest of the following papers were written there has been a large influx of foreigners, which tends steadily to lessen the homogeneity of the town population.

All the contributors are interested students of local government. But a word of personal thanks is due to them for helping to make this volume possible, particularly in view of the inaccessibility of data and the imperfections of average municipal reports. Thanks must also be returned to the many provincial and municipal officials and other correspondents, forming a list too long to be given here, who have furnished valuable information.

S. MORLEY WICKETT

TORONTO, November, 1907

THE EVOLUTION OF LAW AND GOVERNMENT IN THE YUKON TERRITORY

BY

JOHN N. ELLIOTT BROWN, M.B.

FIRST TERRITORIAL SECRETARY OF THE YUKON

THE EVOLUTION OF LAW AND GOVERNMENT IN THE YUKON TERRITORY

Legislation affecting the Yukon has been created mainly by House of Commons); (2) Acts of the Dominion Parliament; and (3) Ordinances of the Yukon Council (subject to disallowance by the Governor-in-council). A portion of the Yukon boundary has been the subject of international arbitration; and for a time one Yukon city and one Yukon town have had charge of their own local affairs.

The legislative acts of the Governor-in-council and of the federal Parliament have been prompted largely by the Minister of the Interior, under whose especial supervision the Yukon has always been. Other ministers had representatives in the country, even during its early history. The Minister of Customs had a collector; the Minister of Justice, a judge and sheriff; and the Postmaster-General an inspector and a postmaster; but during the first seven years of the history of the mining camps no minister visited in person this important part of the Dominion.

The interest of the Canadian Government in the Yukon District was first roused by a letter from the venerable Bishop Bompas of the Diocese of Selkirk in the Yukon valley. His Lordship reported that in the winter of 1892 and 1893 some two hundred British and American miners had entered the Yukon district and "were teaching the Indians to make whiskey, with demoralizing effects both to whites and Indians and with much danger from the use of firearms," and asked that a detachment of North-West Mounted Police be sent into the district to keep the peace. In view, however, of the difficulties and expense of transportation and the possibilities of international complications, the request was not acceded to at once; but, after further entreaty from the Bishop, supported by a communication from the secretary of one of the large companies trading on the Yukon river, the Government decided to send into the district an inspector of the North-West Mounted Police "in the interests of peace and to act as government agent in regulating the liquor traffic, and to look after the public revenue, and administer justice generally." The agent, Captain Constantine, with his clerk, arrived at Fort Cudahy on the Yukon river (a post

forty miles from the site of Dawson and about fifty miles from the Alaskan boundary) in the latter part of 1894. He commenced his duties in a log cabin chinked with moss and covered with earth. In June, 1895, he was clothed with magisterial power, and was appointed Land Agent and Collector of Customs and of Inland Revenue.

On the 2nd of October, 1895, the Yukon (until now only a corner of the great North-West Territory) was elevated to the dignity of a District, with an area of 196,976 square miles, almost equal to that of the whole of Ontario. On that August day of 1896 on which Carmack and his Indians made the wonderful discovery of gold on Bonanza creek Captain Constantine transferred his customs duties to a representative of that department; and in 1897 he handed over the recording of claims to an official of the Department of the Interior, styled Gold Commissioner. This official also took over the land agency.

Meantime thousands of men from all parts of the civilized world had pushed through "the rock-locked gates" of the Chilcoot to the "golden doors" of the Klondike. To supervise "the stampede" and minister to the stampeders, the Government sent in a squad of sturdy North-West Mounted Police. The Police maintained law and order in the Yukon, as they did in the North-West—a fact that means much when one considers the character of the cosmopolitan population. During the first two or three years their work was confined mainly to Dawson and its immediate environment, "the creeks." Most of the creek posts were within a distance of fifty miles from Dawson. Other posts, however, more remote, were established by degrees, extending from the boundary between Alaska and the Yukon to the White Pass in the Coast range, some six hundred miles further south. The powers of the Police were extensive. In addition to the duties peculiar to that body, they acted as collectors of the royalty tax, which the Government exacted from the miners; as mining recorders and postmasters; and as assistant collectors of customs. The officers were all magistrates; and, to the motley population which first rushed to the district, they represented paramount authority. On the 16th day of August, 1897, the Yukon Judicial District was created, and a judge was sent in from the Territories.

On August the 17th, 1897, Major Walsh, of Sitting Bull fame, was appointed chief executive officer of the Dominion Government in the District under the title of Commissioner of the Yukon. He reached the southern portion of the District in the late autumn and camped for the winter, being engaged in regulating the rush of incoming miners. In the spring of 1898 he proceeded down the river to Dawson, which, by that date, was a tumultuous city of tents. Commissioner Walsh was invested with complete authority over all the Yukon government officials, with full command of the North-West Mounted Police; and by special commission he held the unique and unusual power to alter or amend any of the mining regulations issued under authority of the Governor-in-council, if he considered such change to be in the interests of the miners. Although possessing autocratic powers, the Commissioner frequently called in council informally a number of other officials who had been appointed to positions in the service, in the persons of the Judge, the Crown Prosecutor, the Gold Commissioner, the Mining Inspector, and one or two others.

Major Walsh's *régime* was marked by (1) the establishment of the first territorial Court, presided over by Mr. Justice McGuire; (2) the reduction of the royalty tax of 20 per cent. (imposed by Order-in-council on all gold mined in the Yukon) to 10 per cent.; (3) the establishment of police posts along 600 miles of the Yukon river—between Lake Bennett and Dawson, and also upon the rich gold-bearing creeks near Dawson; (4) the collection of license fees and the regulation of the traffic in intoxicating liquors. At this time liquor permits were being issued by the North West territorial Government, as well as by the federal Government, a tangle which for a time created considerable confusion in Dawson, as well as in Regina and Ottawa.

Major Walsh spent some $15,000 in the relief of miners stranded on the trail; and by way of prevention of future hardship gave orders that no miner should be permitted to enter the District without being provided with a grub stake. Major Walsh's successor, Mr. William Ogilvie, and Colonel Steele, Commandant of the N.W.M.P., enforced even a stricter regulation, but the federal Government countermanded the

order, informing the officials that they had exceeded their prerogatives in preventing free ingress of aliens. Although *ultra vires,* the regulation was generally viewed at that time as a wise one.

Major Walsh resigned within a year of his appointment and was succeeded as commissioner by Mr. Ogilvie, whose local knowledge and experience in the Yukon during the earliest days of the Klondike discovery eminently fitted him to deal with the country and its needs. Mr. Ogilvie's appointment followed the passing of the Yukon Territory Act by the Dominion Parliament (13th of June, 1898). This Act made the Yukon District a separate territory, with local government by a Council holding similar powers to those held by the Lieutenant-Governor and Legislative Council of the North-West Territories. This Council was presided over by the Commissioner. The other five members of the Council were the Superintendent of the North-West Mounted Police, the Judge, the Gold Commissioner, the Registrar, and the legal adviser—all being appointees of the Governor-in-council.

The Act provided that the laws relating to civil and criminal matters and the Ordinances of the North-West Territories at the time of the passing of the Act should be and remain in force in the Yukon until amended by an Act of Parliament, Order-in-council or Ordinance of the Yukon Council. Ordinances relating to the sale of intoxicating liquors, fires, aid to hospitals, inquiries into public matters, trespassing, assessment of the town of Dawson and the protection of game, were among the earlier legislative acts of the Council.

The first Yukon Council meetings, held in October, 1898, were attended by the only three members of that body who had reached the Territory—the Commissioner, Mr. Ogilvie, Mr. Girouard, Registrar, and the N.W.M.P. Commandant, Colonel Steele. During the first year the Council met every few days. The proceedings were rather informal for a time; later, the procedure was made to follow parliamentary practice. During the first two years the meetings were conducted with closed doors, but through the persistent outcry of the press and the people, an amendment to the Yukon Act (passed August 11th, 1899) provided that the sittings of the

Yukon Council should be public. The Council had no power to enact or amend the mining regulations; these were passed at Ottawa by the Governor-in-council, under the authority of the Dominion Lands' Act and the Yukon Territory Act, and embodied in various Orders-in-council. The first regulations were issued in January, 1898; the second, containing amendments to the first, in March, 1901. They were based mainly on certain traditional regulations of the early miners, upon the recommendation of the Yukon officials, and upon the representations of the miners themselves by petition or otherwise. Before the organization of government in the Yukon, the miners themselves, at " miners' meetings," framed and adopted certain primitive regulations, which were strictly adhered to. Cases of dispute were settled by discussion and majority vote in open meeting called for the purpose. One of the miners was deputed to act as Recorder of Claims.

Briefly, the mining regulations gave a miner, on payment of ten dollars, the privilege of prospecting for gold for one year on unreserved Crown lands; and, if he desired, on payment of fifteen dollars, of leasing a claim for one year. To hold the claim the yearly renewal of both mining certificate and lease was compulsory, whether the claim was a rich one or a " wild cat." In addition to these heavy fees (regarded as taxes) the miner had to pay a royalty of at first twenty, then ten, then five, and, finally, two and one-half per cent. of the output of his claim. For a number of years the output under five thousand dollars was subject to exemption. The fees and royalty tax were considered excessive and burdensome, and were reduced only after many appeals from the miners for reduction. At the end of the year, in order to obtain a re-lease of a claim from the Crown, it was necessary (up to two years ago) to do two hundred dollars' worth of work or to pay two hundred dollars in lieu thereof. Claims varied in size, depending on whether they were in the creek valley, on the hillside, or on the bench beyond the summit of the valley. In the early days a creek claim extended 500 feet up and down the creek and from rim rock to rim rock in width or, later, from the base of the hill on one side of the valley to the base of the hill on the other side in

width. The regulations further provided the basis upon which the miner could secure water with which to wash up his dumps.

Mining disputes were heard by the Gold Commissioner, with right of appeal to the Minister of the Interior at Ottawa. They might also be heard in the territorial court, from which appeal lay primarily, in the early days, to the Supreme Court of Canada, later, to the less remote Supreme Court of British Columbia. After the arrival of a second judge, the two judges with the Gold Commissioner formed a Court of Appeal from the Gold Commissioner's court, the latter assisting in reviewing his own decisions. With the coming of a third judge an Appeal Court was established, consisting of the three judges, who heard appeals from the Gold Commissioner and from each of their own courts. Appeals from the court *en banc* could be taken to the Supreme Court of Canada, and on to the Privy Council.

During the evolution of the mining regulations litigation was exceedingly rife. Hundreds of miners lost everything at the hands of the disputants or the lawyers, and left the country in dismay. The main objections raised to the regulations were their frequent alteration by Order-in-council and the unduly high fees, which further did not secure to the miner a good title to his claim. The miner was anxious to have a firm hold on his claim, which he held only by leasehold from the Crown, renewable yearly. The validity of the title was often questioned, and many a valuable claim was lost to the honest tenant through the perjury and cupidity of a counter-claimant. Through the cupidity or stupidity of the applicant for a claim, or of the Mining Recorder, grants were often issued for ground already staked and for which prior grants had been issued; or a second surveyor, employed by a counter-claimant for the ground, might make a re-survey of the ground, by which the new claim would contain the paystreak and the old claim the barren muck and gravel. Later regulations happily tend to reduce such quarrels to a minimum. But the earlier regulations, subject to change at any time during the year by the Governor-General-in-council, never gave satisfaction to the Yukon public. Capitalists were afraid to invest their money in the country. The miners clamoured for a mining code. Finally Ottawa con-

sented, and a bill was prepared by the Commissioner from data received at first hand by himself and his coadjutors from the miners. These together with the best features of the mining regulations were collated and submitted to the Mining Committee of the Yukon Council for approval, then forwarded to Ottawa in the form of a draft bill, and passed by the House as "An Act Governing Placer Mining in the Yukon," which, according to ex-Commissioner McInnes, has had a very stimulating effect upon the mining industry.

Hydraulic Mining Regulations

As yet there have been only one or two attempts at hydraulic mining in the Yukon. A great many locations were leased and held for a number of years, but most of them reverted to the Crown without any development work having been done upon them. This was not the fault of the regulations. So long as most of the placer mines on a creek were being worked by ordinary placer methods, any extensive hydraulic mining was impossible.

The earliest hydraulic mining regulations were approved by Order-in-council in December, 1898, but were amended in a number of particulars on several subsequent occasions. They provided that a free miner might prospect on Dominion lands, and if he or his authorized agent found gold in quantities so small that he could not work the ground profitably by ordinary placer methods he might apply to the Government for a lease, which should cover an area extending five miles along a stream and in width a distance of one mile, or from summit to summit of the creek valley. The miner's affidavit as to the richness of the claim or pay-dirt had to be corroborated. The applicant was required also to obtain a certificate from the Gold Commissioner to the effect that the ground applied for was unfit for placer mining, and unoccupied by placer claims. Another certificate had also to be secured from the Commissioner of the Territory, to the effect that he was satisfied that the applicant or his agent had been upon the ground applied for and had personally prospected there. The application was then forwarded to the Department at Ottawa; and, if it was found that there were no prior applica-

tions for the ground, the applicant was permitted to have a survey of the location made. Upon the approval of the plans of survey the ground was closed by the Government against placer entry, and the applicant was given a provisional lease.

These regulations were found fault with for several reasons. It was said that the prospector was tempted to prospect only on low grade portions of the location, as, the lower his pannings, the more likely was he to receive a favourable consideration of his application. Applicants often secured the necessary certificates from the Yukon officials without having done more, in some instances, than a few days' prospecting on locations extending five miles along a stream. Great complaint was made by the prospectors generally because such large areas of gold-bearing gravel were closed to placer entry without having been thoroughly prospected. Many miners left the camp because of this. There were cases where miners who had prospected for months in certain districts found gold in quantities sufficiently rich to justify them in staking placer claims, but when they came to record were informed that the ground was held as a hydraulic concession. Further, the hydraulic mining regulations provided that the ground might be worked by "hydraulic or other mining process." This enabled the lessee of a hydraulic concession really to work the ground by the ordinary placer methods, as was done on the first hydraulic location applied for and granted in the Yukon.

Taxation and Representation

The Yukon Council, during the first year of its existence, could not, under the Yukon Act, levy taxes. The territorial revenue was derived mainly from liquor permit fees and liquor license fees, and the greater portion of it spent on the unincorporated town of Dawson. The Council felt that the people of Dawson ought to be taxed, and, as this could not be done under the Act, they appealed to Ottawa to amend it. Meantime the people of the Yukon and of Dawson were pressing for representation in the territorial Council; so the same Act which provided that the Yukon Council might tax the people contained a clause providing for the election by the people of two representatives to sit with the five appointed members of the Council.

Under authority of the amended Act the Council passed an Ordinance (April, 1900), providing for the assessment of Dawson. All real and personal property and income were made taxable "to meet the expense of local improvements and care of the public health." A special feature of the Ordinance was the assessing of the stock-in-trade, which was taken to mean the volume of business done by single merchants or firms. This was considered a hardship, as Dawson was very largely stocked with goods each autumn, which were turned over two and three times by wholesale and retail dealers, and hence became liable to double or triple assessment. The assessment of Dawson during the three palmiest years of the camp was as follows:—

	1901	1902	1903
Land	$1,941,950	$1,810,690	$1,835,550
Rate	....	....	2 %
Buildings and improvements	2,212,890	2,334,400	2,113,650
Personal property	6,293,700	5,856,800	4,056,450
Income	1,199,100	656,550	1,013,150
Total	$11,647,640	$10,658,440	$9,001,800
Rate	1¼ %	1¼ %	1½ %

Further Representation

The Yukon was peopled for the most part by British and American subjects, who, true to their traditions, kept up an incessant demand, through the press and by petition to the Commissioner and to the Government at Ottawa, for representation in the Dominion House of Commons, and for increased representation in the Yukon Council. Noting the strong sentiment of the people, the Hon. James H. Ross, soon after his arrival in the territory as Commissioner, made a strong appeal to Ottawa on both points. Accordingly in May, 1902, the Yukon Act was further amended, so as to provide for five elective members to the Council, with similar powers to those held by the five members appointed by the Governor-in-council. At the same time was passed the Yukon Representation Act, making the Yukon an electoral district with right to elect one member to the House of Commons.

While the campaign for representation in the Council and in the federal House was going on, the citizens of Dawson were directing their efforts towards self-government; and on December 16th, 1901, Dawson, with a population of over nine thousand, was granted a charter of incorporation as a city. Up to this time the Council had been looking after local affairs in Dawson. The elective members joined the people in the struggle for incorporation; but it was owing to Mr. Ross, who had previously submitted the wishes of the people to the Government on the question of territorial and federal representation, that this also was brought to a successful issue.

The charter provided that its main provisions should not come into force until Dawson was proclaimed to be incorporated. This proclamation was not issued until the Commissioner had submitted to the electors the questions:—"Shall Dawson be incorporated and be governed by a commission to be appointed by the Commissioner-in-council?" and "Shall Dawson be incorporated and be governed by an elective mayor and council?" The electors voted in favour of a mayor and council. The charter further provided that the mayor and aldermen were to be British subjects, over 25 years of age, and ratepayers. The mayor's property qualification was that he should be assessed on $2,000 real property, or upon real and personal property, separately or together, of at least $3,000. Voters had to be adult British subjects, rated upon the previous year's assessment, and having paid all taxes before nomination day. The mayor received a salary of $3,000 and an alderman $1,500. The North-West Mounted Police, under pay from the Dominion Government, did efficient police duty for Dawson. The Assessment Ordinance of the Yukon Council, under which the Dawson people had already been assessed for some two years, was continued as the basis of assessment.

The citizens of Dawson do not own any of their franchises. A private telephone company operates a system in Dawson but has no exclusive privileges. It is the same with electric lighting. The two companies have extensions from Dawson up the creeks to a distance of 50 miles. Some of the larger mine owners have their shafts and drifts lighted by electricity and use this power to drive their pumps when sluicing, and in their

cabins are telephones with which they are able to communicate with the city or with any of the creeks. The water supply is also controlled by a private company. In summer the water is carried through pipes to all parts of the city. In winter all branches are closed and the water is confined to the main. The pipes lie suspended in wooden boxes sunk some four or five feet below the surface. The water is pumped from a well near the Klondike river, warmed at the station and forced rapidly through the main, escaping into the Yukon river below the town. It has withstood ten days of a continuous temperature of over 50 degrees below zero (once as much as 68.5 below) without freezing. The street hydrants are kept from freezing by being sheltered in little metal houses heated with stoves. In winter water is carried on sleds to residents who do not live in the vicinity of the main. The city having suffered from three disastrous fires has a fire department, manned by over twenty firemen. There are two fire halls and three engines. The cost of maintenance has run as high as $70,000 per year.

More Representative Government

In July, 1901, Mr. Ross extended the possibilities for further representative government in causing the enactment of an Ordinance respecting unincorporated towns, which provided that the majority of the population of any settlement, containing not less than 10 dwellings, might petition the Commissioner of the territory to be made an unincorporated town with a measure of self-government. Male and female British subjects of age were permitted to elect a male voter as a paid overseer who should be mayor and council in one. This Unincorporated Towns Ordinance contained provisions respecting the prevention of disease and fires, and the trespassing of animals, etc. It provided that at an annual business meeting the work of the overseer during the year should be reviewed, and his estimates for the succeeding year considered. A direct tax up to twenty mills on the dollar could be levied, the assessment being made under the provisions of the general assessment Ordinance. Grand Forks, situated at the junction of Eldorado and Bonanza creeks, some 13 miles from Dawson (population in 1902 about one thousand), was the

only town to take advantage of the provisions of the Ordinance. Owing to the subsequent dispersion of the population its local government has reverted to the Yukon Council. In the meantime the establishment of Grand Forks and the incorporation of Dawson relieved the Commissioner and his staff of a great deal of work, and gave the people a larger measure of contentment and satisfaction. An amendment to the Towns Ordinance provided for the exaction of a business tax. This widened the circle of revenue producers, and the money was found very acceptable in meeting the many calls upon the overseer for streets, lighting, fire protection and similar services.

Acts Relating to Law Courts

In May, 1901, an Act amending the Yukon Act provided for the appointment of a police magistrate at Dawson and another at White Horse. A magistrate must have practised as an advocate, barrister or solicitor for a period of not less than three years. The new office relieved the Inspectors of the North-West Mounted Police of much work and extended the area of summary jurisdiction.

By another Act of the same session an appeal was allowed from the territorial Court to the Supreme Court of Canada. A third Act (passed in October, 1903) provided that two judges should constitute a quorum of the territorial Court *en banc*.

In September, 1902, the Yukon Council passed an Ordinance authorizing the consolidation of the Yukon Ordinances; and, by proclamation, these consolidated Ordinances went into force in July of the following year. In an earlier paragraph some of the first Ordinances of the Council were referred to. A brief reference to some of the more important later ones may be made here. The principal Ordinances of the North-West Territories which were made to apply, for the most part, *mutatis mutandis*, in the Yukon were:—the interpretation Ordinance, respecting controverted elections, vital statistics, the judicature Ordinance, respecting sheriffs, arbitration, mortgages and sales of personal property, joint stock companies, foreign corporations, benevolent societies. By the Yukon Council, Ordinances were passed relating to the following:—elections, steam boilers,

ferries, health, protection of miners, public administrator, summoning of juries, partnerships, marriage, the legal profession, medicine and surgery, dentistry, druggists, dogs, trespassing animals, public libraries and schools.

The establishment of schools, both public and separate, preceded any legislation respecting them. A private school, founded in 1898 by an Anglican missionary, was the earliest in Dawson. Shortly after this the Sisters of a Roman Catholic mission started a small school which was supported at first by the Catholic Church. In 1900 a public school was established with which the Anglican school became merged. The Catholic school remained separate, and later was given government support. The school law of the North-West Territories was applied to the Yukon schools. The pupils of the Dawson public school soon numbered nearly three hundred. In 1901, an inspector was appointed, who gave it a thorough organization. He also established schools on the leading gold-bearing creeks, each of which was entrusted to the care of a competent teacher. The teachers were well paid, receiving from $175 to $225 per month.

During the month of July, 1906, the Yukon Council passed a number of Ordinances affecting local affairs. Chief among these were:

(*a*) An amendment to the assessment Ordinance; whereby taxation by assessment upon land and trades licenses was extended to certain towns in the territory. The towns of Whitehorse and Grand Forks have been brought under the operation of the Ordinance.

(*b*) A succession duties Ordinance was passed; it was framed upon the lines of the British Columbia Act, the succession dues being made identical with those in that province.

(*c*) The juries Ordinance was amended so as to permit of juries being summoned in other parts of the territory besides Dawson.

(*d*) An Ordinance dealing with the preparation of voters' lists, and the conducting of elections of members to the Yukon Council. This Ordinance was carefully prepared by a representative committee of the Council, and was passed with the concurrence of all the members.

In 1903, at a cost of $25,000, Mr. Andrew Carnegie built a

library for Dawson, which was greatly valued. It may be said in passing that the intellectual level of the population of the Yukon District will probably be found to stand higher than that of any other similar community in the world.

In September, 1902, was passed the Public Service Ordinance, providing for the appointment by the Commissioner of various territorial officers—the Territorial Secretary, Treasurer, Superintendent of Works, Superintendent of Schools, License Inspector, and Health Officer; and outlining their duties. This was an important step because it transferred largely the control of certain of these officials from the Departments at Ottawa to the Commissioner in Dawson.

A Lien Ordinance was passed, the object of which was to enable the working miner to secure his wages by a lien on the mine or on the dump. It required a prolonged fight to get this Ordinance through the Council. It raised a difficult point in legislation, the Yukon Council having the right to legislate in reference to collection of wages, while the output of the mine, the dump, was Dominion land. It was held that the dump was beyond the jurisdiction of the Yukon Council, that to legislate thereon would be *ultra vires.* However, the Ordinance was passed, but, upon being submitted to the Governor-in-council for approval was disallowed.

A Step Backward

In the autumn of 1902 the Commissioner, Mr. Ross, became the first member of parliament for the Yukon. In the year following when it became necessary to elect a successor, the footballs of the campaign were the liquor licenses and the Dawson charter. There was no concealment of the situation. Mr. John T. Lithgow, Comptroller of the Territory, at a council meeting on July 25th, 1904, uttered these words:

"I think the probabilities are that the Commissioner will refuse to license when the applicants are not in friendly sympathy with the government; and that in cases where applicants take an aggressive part against the officials of this government, the probabilities are that they will lose their licenses."

Popular resentment of this statement, made in the "Parlia-

ment of the Yukon," led to a marked exodus to American mining camps in Alaska. In the matter of the Dawson charter, a slightly signed petition was presented asking for a local plebiscite to ascertain whether or not the municipal charter granted in 1901 should be revoked; and in July, 1904, such a plebiscite was provided for by Ordinance-in-council. Objections were raised on the ground of it being a piece of political strategy to gain control of local patronage. No penalties were fixed for fraud and no provision was made for appeal. The clerk of the municipal council, as returning officer, was given power to issue voting certificates and to count the votes without witnesses. Members of the city council finally sought an injunction to restrain the taking of the plebiscite until the validity of the certificates issued by the clerk could be determined. But the judge refused it. He said: "I am not satisfied as to my powers to grant an injunction under all the circumstances. If I were completely satisfied I would restrain the use of these certificates. My own views are that no fair expression of public opinion can be obtained under the election to be held to-morrow under all the conditions as they now exist, both as to the time given for issuing the certificates and owing to the doubt existing in the public mind as to the legality of the certificates issued. The vote is to ascertain the feelings of the people regarding their surrender of the charter; and if the Commissioner is convinced that proclamation should not be issued revoking the charter I am convinced that in the exercise of reasonable discretion he will not issue it. The responsibility rests with him."

The vote, however, was taken, and the governance of the city passed again under the direct control of the Commissioner. Shortly after this an election was held for the House of Commons. The Commissioner ran, but was defeated.

The people's desire for a wholly elective Yukon Council has not yet been granted. The Commissioner in the chair still holds the balance of power between the five appointed and the five elected members, and advises with the Department of the Interior as to the policy of his administration.

More or less political unrest may be expected in the Yukon. until a wholly elective Council is granted; for the struggles of this youngest territory are but the repetition of the struggles of

Ontario, Quebec, and the North-West for fully responsible government.[1]

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[1] A census of the population made in 1901 shewed that there were 27,219 people in the Yukon. There are now probably not more than 8,000. The population is one of the most cosmopolitan imaginable. To these gold fields rushed the miners of Australia, New Zealand, British Columbia, South Africa and California; capitalists from London, Paris, San Francisco, New York, Chicago, Boston, Montreal; gold-seekers from every country in Europe, every state in the United States, and every province of Canada. Approximately the gold output has been as follows:—

1897	$2,500,000
1898	10,000,000
1899	16,000,000
1900	22,250,000
1901	10,500,000
1902	12,250,000
1903	10,500,000
1904	8,350,000
1905	7,160,000
1906	5,180,000

The prospector is the basis of a progressive mining camp, and as yet only a fragment of the Yukon has been prospected. Unfortunately restrictive measures in the past (need of a prospector's license, proof of title, etc., etc.) have driven him into Alaska where the gold output has risen in proportion as the Yukon's has fallen. It is estimated that there are now in Alaska fifty prospectors to one gold seeker in the Yukon; a few years ago the reverse was the case.

LOCAL GOVERNMENT IN BRITISH COLUMBIA

BY

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LOCAL GOVERNMENT IN BRITISH COLUMBIA

The trading posts of the Hudson's Bay Company were the cradle of British Columbia. It was the Hudson's Bay Company that successfully withstood the territorial ambitions of Russia to stretch Alaska southward; just as it was the same Company that was largely instrumental in preventing the United States from pushing its coast line northward to Alaska. The coast boundary of what was afterwards British Columbia on the north was finally fixed at 54° 40′ by the Anglo-Russian treaty of 1824, and the southern boundary at 49° by the Oregon treaty of 1846.

A few dates will mark the steps in the organization of the province. In 1821, when the Hudson's Bay Company had absorbed its greatest trading rival on the Pacific coast, the Imperial Government placed the territory from the Rockies to the coast in the hands of the Company as then enlarged. The lease ran for 21 years (to 1842), and was afterwards extended a further 17 years (to 1859). The famous gold rush to California of 1849 directed further attention to the locality, and in that year Vancouver Island was included in the lease for optional periods of 5 or 10 years. Nine years later the first stampede occurred to the placer gold diggings of British Columbia, in which, it is estimated, between twenty and thirty thousand took part. Accordingly, when the Hudson's Bay Company's lease expired in 1859, the island and the mainland were made a single Crown colony with Victoria (incorporated as a town in 1862 and as a city in 1867) as its capital; and in 1871, on condition of a transcontinental railway being built to unite it with the east, it became one of the provinces in the Canadian confederation.

The province has a large area, with magnificent natural resources, but as yet a sparse population. Its area is 372,630 square miles and its population in 1901 was 178,657, made up of 120,226 whites, 19,482 Chinese and Japanese, and 28,949 Indians and half-breeds. One-fifth of the white population are Canadians by birth, over half of these coming from Ontario. Thirteen per cent. of the whites are Americans by birth, most of them being miners. Apart from the Indians, one-third of the

population live in the four cities, Vancouver, Victoria, New Westminster, and Nanaimo, the rest being divided amongst other forty-eight municipalities. By the end of 1874 five municipalities had been incorporated; four more were incorporated in the eighties, twenty-five in the nineties, and eighteen since the turn of the century. Down to 1893 the population at the placer diggings came and went, but stability has now been given it by deep mining, railways, lumbering, and fruit-growing.

Although the municipalities are small in number, the provisions for local administration are very complete and closely resemble those of the older provinces. At the same time municipal objects figure more largely in the provincial budget than they do, for example, in Ontario. It means that municipal development has not proceeded so far as in the eastern provinces. This was one of the points recently urged with success by the Prime Minister in asking for an extra subsidy to British Columbia over and above whatever *per capita* grant was made to the provinces generally. The chief municipal measures will be found in the following Acts with their amendments:—the Municipal Ordinance Act of 1886 to incorporate the city of Vancouver, and Acts in the same year incorporating its electric light, water works, gas, and street railway companies; the Highway Traffic Regulation Act of 1888; the Legislative Library and Bureau of Statistics Act of 1894; the Villages Fire Protection Act of 1897 (for unincorporated towns and villages); the Municipal Elections Act of 1897; the Health Act of 1897; the Municipal Clauses Act of 1896, consolidated and amended in 1906; the Counties Definition Act; an Act to assess, levy, and collect taxes on property and income, 1903; an Act respecting sanitary and drainage companies, 1904; the Public Schools Act, 1905; the Liquor License Act.

Under Company rule administration was in the hands of the Company's governor and his council of factors. When British Columbia became a Crown colony the governor had wide discretionary powers. For example, the Borough Ordinance of 1865 empowered him to grant municipal institutions if "*in his opinion* a sufficient proportion of the residents in any town or place in the Colony" so petitioned. The powers allowed to a local council were to be enumerated in detail, a limit was to be

placed on tax rate and debt and the governor might repeal or alter any municipal by-law. It is interesting to note that the Ordinance of 1867 incorporating Victoria as a city provides for local improvements on petitions representing seven-tenths of the value of lots abutting, and that by-laws passed in answer to such petitions were not subject to disallowance by the governor.

The Consolidated Municipal Act passed in 1872, one year after British Columbia entered the confederation, gave the Lieutenant-Governor-in-council power to incorporate as a municipality any district not larger than 10 square miles, having 30 adult male inhabitants. Two-thirds of these were first to express their desire for incorporation; though nine years later the petition of a bare majority was enough. Vote by ballot came in 1874. Under the combined influences of local needs and the example of the older provinces, particularly Ontario, amendments and additions have been made to the municipal legislation from year to year, until to-day the system of local government closely resembles that of Ontario. Without attempting to trace the changes in detail, mention may be made of some of the more important provisions of the Municipal Clauses Act of 1906, an Act corresponding in some respects to the general Municipal Act of Ontario.

The Act covers 155 pages and provides for the municipal government of all municipalities not governed by a special Act, including Vancouver and New Westminster in so far as it is not repugnant to their incorporating and amending Acts. The Act bears witness to the tendency throughout Canada towards a single municipal Act for each province. Cities are administered by mayor and aldermen, townships or districts by reeve and councillors. The mayor is given high responsibilities. He is empowered to appoint the standing committees, and may return to the council for reconsideration, or veto once any measure passed by the council. The number of aldermen and councillors is usually small, from 5 to 10 in the case of cities, and 4 to 10 in the case of rural districts. The indemnities payable are not to exceed $2,000 to a mayor, $400 to an alderman, and $100 to a reeve or councillor. Since 1903 much wider scope has been given to the principle of the referendum, as may be said in fact of all Canadian provinces. It is interesting to note that the

directors of an incorporated company may appoint a representative to vote at municipal elections.[1] In cities if any person finds his name improperly omitted from the voters' list he may have it entered by the police magistrate or by a county or Supreme Court judge so instructing the municipal clerk. In district municipalities the local council revises the lists on the Saturday preceding an election. Nominations take place on the 2nd of January and elections on the Thursday following. Every municipality is divided into wards according to assessment. If in any one ward the proportion of population differs from that of another by more than 40 per cent., any member of the council can have a redivision of wards; or if the ratepayers representing over half the assessment so petition, the council may abolish wards altogether.

Some interesting differences from Ontario one notices in connection with the administration of liquor licenses and police. In 1876 the Ontario system was introduced of removing the control of liquor licenses and police appointments from the hands of the aldermen. Licenses were granted by a board made up of the mayor (or warden), the police magistrate, and a resident justice of the peace; police appointments were made by a board consisting of the Provincial Secretary, the mayor (or warden), and a local justice of the peace. Twenty years later (1896), however, the council resumed control. In each case the board now consists of the mayor (or warden) and two appointees of the Lieutenant-Governor-in-council, one of whom must be a member of the municipal council.

Assessment and Revenue

Ordinary municipal revenue is drawn from taxes on realty and improvements, statute labour, trade licenses, fines and fees, and local improvement rates. Local taxes on personalty and on income are not allowed. British Columbia alone of Canadian provinces makes such a restriction. As in the west generally, the improvements are not to be assessed for more than 50 per cent. of their value, and at the discretion of the council may be exempted altogether. Specific licenses form an important item;

[1] Municipal Amendment Act, 1898. This has been copied in the Edmonton Act and is being petitioned for in Ontario.

bankers, traders, wholesale as well as retail, etc., pay specified amounts in the form of trade licenses. As regards local improvements, if the city council by a two-thirds vote decide to bear one-half the cost, local improvements may be undertaken without a petition of the ratepayers directly concerned, subject to ratification by the ratepayers. In this way a measure of elasticity is given to arrangements between the city and local property owners.

In the attempt to make municipal book-keeping as specific as possible the council is empowered to levy special rates up to one mill for board of health and hospital purposes, and up to 15 mills on the dollar for school purposes (though for the latter purpose the council may increase the appropriation). The realty tax is not to exceed 15 mills over and above the rates levied for board of health and hospitals, schools, and interest and sinking funds. The assessment may be made every second year by the amendment of the previous year's roll. The council, or a sub-committee, acts as a court of revision and equalization, with right of appeal to a judge of the Supreme Court or to a County Court judge. Whatever portions of the province are not included in municipal boundaries are assessed and taxed under a separate assessment Act (the Act of 1903 and amendments). All its real property, wild land, personalty and income taxes are collected by the government and form part of the consolidated revenue of the province.

Debts and Debentures

The council's powers are curtailed by being enumerated at length, and by the prohibition to contract liabilities beyond the revenue of the current year. Very detailed provisions are also laid down governing the creation and regulation of debt, and for securing ample sinking funds. No debt may run for more than 50 years, and the total indebtedness must not exceed 20 per cent. of the assessed value of land and improvements. Money by-laws in the city require a three-fifths majority, and in a rural municipality a majority vote. In the case of municipal ownership the council is free to borrow upon the security of the revenue from any civic industry without a general vote of the ratepayers up to the unencumbered value of

such revenue capitalized at 4 per cent., in which event the earnings thus pledged must be withdrawn from the annual municipal revenue.

Transfers of debentures are facilitated by debentures being payable to bearer when endorsed in blank. Their validity is well secured. Any insufficiency of form or otherwise of debenture by-laws cannot be advanced if the electors have assented to the by-law and no successful action to quash has been made within the time limited by the Municipal Act, or if interest for one year or more has fallen due and been paid. This provision is reproduced in the Edmonton and Regina charters.

The special Acts relating to Victoria and one or two other places call for but slight reference. Since the incorporation of Victoria as a town in 1862 and the Victoria municipal ordinances of 1867 a much wider measure of freedom has been given to the municipal council. In fact, as early as 1873 the practice was begun of applying selected clauses of the general municipal Act to places for which special Acts had been passed.

Since 1893 no summary of municipal revenues and expenditures has been published. While rural municipalities *must,* cities (curiously enough) *may,* publish a statement of their finances. But the Provincial Secretary may call for what information he desires from any municipal official; and in case he finds evidence of imperfect auditing the Lieutenant-Governor-in-council may provide for fresh auditing at local expense. Certain improvements in the Bureau of Statistics Act are at present under consideration. Until the municipalities furnish better statistics a complete picture of local conditions is impossible—a remark which will hold for every province in Canada.

LOCAL GOVERNMENT IN THE MARITIME PROVINCES

BY

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LOCAL GOVERNMENT IN THE MARITIME PROVINCES

Out of the territory east of the Penobscot and south of the St. Lawrence were carved the three Maritime Provinces of Nova Scotia, New Brunswick and Prince Edward Island. The French called the district Acadie, and the Scottish King of England, in his grant to Sir William Alexander in 1621, Nova Scotia. The Isle of St. Jean (now Prince Edward Island) was granted a separate government in 1769, but was not renamed until 1799 after the visit of Prince Edward. The Loyalists on the river St. John, exasperated by delays in the issue of land patents and by apparent neglect, demanded and got separation from Nova Scotia in 1784 and in the name of the new province the House of Brunswick was honoured.[1] In 1784 the island of Cape Breton was granted a separate government, but was reannexed to Nova Scotia in 1820.

To-day these provinces contain less than 1,000,000 people, about one-fourth of whom live in "cities" and "towns." Nova Scotia has two cities, thirty-two incorporated towns and twenty rural municipalities; New Brunswick three cities, about twenty incorporated towns, and fifteen counties; and Prince Edward Island, one city and one town. The largest "cities," Halifax and St. John, have each a population of less than 50,000. The following table, compiled from the census returns, shows that the percentage living in towns and cities is smaller than in Ontario or Quebec:

Total and Urban Population[2]

	Total.		Urban.		Percentage Urban.	
	1891	1901	1891	1901	1891	1901
P. E. Island.....	109,078	103,259	14,285	14,955	13.	14.4
New Brunswick..	321,263	331,120	48,901	77,285	15.2 (19.9)	23.3 (20.1)
Nova Scotia	450,396	459,574	76,993	129,383	17.1	28.1 (24.)
Quebec.....	1,488,535	1,648,898	499,715	656,231	33.5	39.8
Ontario.....	2,114,321	2,182,947	818,998	935,978	38.7	42.7

[1] The name of New Ireland was proposed at different times for each of these new provinces. The Legislature of Prince Edward in 1780 adopted the name, but the Sovereign disapproved. Later it was proposed for New Brunswick (N.B. Historical Collections No. 6, p. 441), but again prejudice prevailed over the passion for symmetry.

[2] In the census of 1891, the population of certain towns in N.B. and N.S. was returned as part of their parishes or districts and therefore as rural. For purposes of

The political and municipal history of these provinces naturally synchronize. In their political history the outstanding events are (1) the settlement by the French, (2) the struggle between the French and English from the capture of Port Royal in 1710 to the second capture of Louisbourg in 1758, (3) the struggle for responsible government, and (4) confederation.

Under the French, feudal ideas dominated local administration. During the uncertain tenure of the British from 1710 to 1758 French deputies and English justices of the peace mediated between the governors and the governed. Wolfe's victories were followed by the authoritative administration of the justices of the peace in general sessions. Though of the people, these justices were not chosen by the people. St. John secured the right to govern itself through its chosen representatives as early as 1785. But no other community secured similar rights until Howe had won his famous victory over the Halifax Court of Sessions in 1835. A series of Acts of incorporation followed, beginning with Halifax, N.S., in 1841, Fredericton, N.B., in 1848, and Charlottetown, P.E.I., in 1855, culminating in the compulsory incorporation of the municipalities of New Brunswick in 1877 and of Nova Scotia in 1879.

The Settlers

To the character and traditions of the early settlers must be traced the nature of the struggle for self-government and the character of the institutions. At the outset physical features naturally determine the localities of settlement. The sheltered slip between the mainland and the peninsula offered the best haven. Here the French entered and settled at Port Royal and on the St. Croix. Later they spread to Cape Breton fortifying Louisbourg. Along the shores, in the bays and up the creeks

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comparison the population of these towns has been deducted from the returns for 1901. The rapid growth in N.S. is due largely to the development in Sydney, and in the mining centres of Cape Breton and Pictou. It is possible that the towns of Portland and Carleton, N.B., now part of St. John City, were in 1891 included in the return for the parish and therefore the rural population. There seems to be no other explanation of the increase of over 16,500 in the urban population of St. John County while the total increase was but 2,185. The population of these towns should have been returned as urban in 1891. With this correction the percentage for 1891 becomes 19.9 for N.B. Making the corrections mentioned for both provinces the percentages for the three maritime provinces combined become 17.6 for 1891 and 21.5 for 1901—an increase of 3.9, as compared with 4 for Ontario, 6.3 for Quebec, or 6.9 for Nova Scotia.

and rivers of the eastern coast of these provinces the tide of population moved, at first impelled by the love of adventure and the prospects of hunting, later by political necessities.

The second inflow of settlers came from New England in search of cod and commerce. Convenient stations they found in the harbours of Chebucto and Canso and in those of the Bay of Fundy. Later on, the arrival of Cornwallis and the prospects of trade attracted large numbers to Halifax. And in 1759 the proclamation of Governor Lawrence brought from Massachusetts and Rhode Island an excellent band of settlers to take up the fertile lands from which the Acadians had been driven.

The fear of French aggression impelled New England to attack and capture Louisbourg in 1745. When Britain returned it to France in 1748, there was but one thing to do—to build a stronger fortress between the French in Cape Breton and the people of New England. Accordingly Lord Cornwallis was sent out to Nova Scotia to establish a fortress and a colony. In 1749 he landed in Halifax with a following of 1,176 settlers and their families. Here he built fortifications and from here he ruled the province.

From the first it was recognized that a garrison without a colony could not hold the French in check. Inducements were accordingly offered to immigrants from England, Germany, Scotland and New England. The colonists, particularly those from New England, soon clashed with the garrison. When political necessities made the colonist almost indispensable, as was the case after the expulsion of the Acadians, liberal promises of land and of self-government were made. But with the coming of security from the enemy, the merchants and farmers found the rule of the Governor-in-Council at Halifax irksome.

The relation of Halifax to the province, it may be remarked, has always been peculiar. At the first it was a garrison in a hostile colony. Later when the New Englanders began to settle in the west and the Scotsmen in the east, Halifax remained a military station and a trading-post. In war times its garrison made it a safe harbour for captured vessels and a profitable place for the sale of supplies. In times of peace, apart from fishing, trade languished. Before the opening of the railways the position of Halifax tended to isolate it from the rest of the province.

Situated on a bay about the middle of the Atlantic seaboard; remote from the old capital, Annapolis, in the west, and from the fishing station at Canso in the east; separated from the fertile valleys to the north by a rough ridge of granite boulders and a surprising number of small lakes and ponds, Halifax was forced to look across the ocean for its trade and its people. The conservatism of the old world settled upon its military government and long resisted the reforms of the new. The struggle for self-government was more prolonged and bitter, and the victory more fragmentary in Halifax than elsewhere. St. John is a striking contrast. Situated at the mouth of a magnificent river, which drains three-fifths of the province and with its broad and deep tributaries provides an unrivalled waterway through the length and much of the breadth of the country, St. John could not fail to grow with the prosperity of the province and through its commercial interests keep in the closest touch with its agricultural and industrial life. Although Fredericton was the political capital, St. John from the first dominated the province, and its reforms became those of the province.

The American Revolution profoundly affected Nova Scotia. The struggle between the ruling and military element from old England on the one hand and the commercial and colonizing element from New England on the other had resulted in the grant of a legislative assembly and some minor reforms. The reforming party, however, suffered severely when the Revolution broke out by the departure from Nova Scotia of several of the most ardent friends of reform and by the suspicion of disloyalty which fastened upon those who remained. At the close of the war the arrival of the Loyalists immediately brought about the division of Nova Scotia into two provinces and local government for the city of St. John; but in the end it strengthened the conservative forces already at work.

The Scottish immigrants who came out to New Brunswick in timber ships between 1783 and 1812 to the centres of the lumber industry on the Miramichi, the Restigouche, and the Richibucto on the east coast, and the St. John and St. Croix rivers on the southern coast, found an established system of government which they accepted and with which they in general co-operated. The inrush of Irish immigrants between 1812 and 1850 spread prin-

cipally to the towns and more populous parts.[1] Ulstermen settled in central Nova Scotia, Scotsmen in the eastern district and Cape Breton, while Yorkshiremen took up the fertile lands on both sides of the isthmus of Chignecto. The first were usually on the side of reform and so were the lowland Scots. The others were of a more conservative turn.

Ideas

Feudal ideas imported from France played little part in the municipal life of Nova Scotia. The compromise of deputies for the French and justices of the peace for the English during the period of disputed rule seems to have left no perceptible trace in the forms of local government. The formative ideas were those brought over by Cornwallis and those introduced by the New Englanders, and, in the case of New Brunswick, by the Loyalists. Those of Cornwallis and the Loyalists had a common origin. The practices of the Loyalists had but suffered a sea-change. They grew out of the adaptation of English ideas and practices to the problems of government in the southern colonies of America, Virginia and New York. As for the New Englanders, they advocated the principles of the chartered government of Massachusetts Bay.[2] In each of the types—the Virginian and Massachusetts—the powers granted to the governing body of the colony came direct from the Crown and not from the Parliament at Westminster; and in each case these powers were granted to a council or company which had the right to choose its subordinate officers.

The fortunes of the two companies, however, were different. The Massachusetts Company migrated to the new land. The election of the assistants to the Governor by the freemen of the company became the election of representatives for the government of the community. The interests of company and colony merged. The Virginian Council ruled from London through

[1] See Ganong's *Origin of Settlements in New Brunswick* (Royal Society of Canada, Transactions, 1904).

[2] The two types, the provincial or Virginian and the chartered government or Massachusetts, are sketched by Mr. J. P. Wallis in an interesting article in the Transactions of the Royal Historical Society, Vol. X.

local councils. The interests of the council and the colonists diverged; which state of affairs led the Crown to intervene and take over the council's rights. The Crown governed through a deputy or governor who called to his assistance a small number of men as councillors but theoretically did not necessarily follow their advice in all things. Together they made and administered laws and also acted as a court of justice. This was the system Cornwallis introduced into Nova Scotia. But the fishermen and the traders from Cape Cod who preceded Cornwallis, and the settlers from Massachusetts and Rhode Island who accepted Lawrence's invitation to occupy the lands vacated by the Acadians were strongly imbued with the ideas of Massachusetts. They became the advocates of self-government.

The Loyalists of New Brunswick seem to have kept before them the provincial system of New York. Their first Governor, Thomas Carleton, was the brother of Sir Guy, for a time Commander of the British forces in New York; and their first Provincial Secretary, Rev. Jonathan Odell, was a New Yorker and former private secretary of Sir Guy. The fidelity with which New York was imitated is seen in the resemblance between the city charters of New York and St. John, and between the charters of the College of New York and the College of New Brunswick. In a letter to the Secretary of State Governor Carleton makes special reference to New York.[1] The prominence of New Englanders in Nova Scotia and the predominance of the Loyalists in New Brunswick will perhaps account for certain differences in the two provinces.

The Loyalists landed at Parrtown in 1783; New Brunswick was separated from Nova Scotia in 1784; St. John was granted a charter in 1785; and a representative Assembly was summoned in 1786 to be elected on practically a manhood suffrage. Cornwallis landed at Halifax in 1749. With great reluctance Lawrence summoned an Assembly in 1758, and Halifax, though petitioning in 1765 and 1790, was denied a charter until 1841. Apparently New Brunswick was dominated by the most democratic ideas and Nova Scotia by the reverse; and yet Governor Carleton claimed that "New Brunswick had improved upon the constitution of Nova Scotia where everything originated, accord-

[1] Can. Archives, 1895, N.B. State Papers, p. 4.

ing to a custom of New England, with the Assembly. But here, where a great proportion of the people have emigrated from New York and the provinces to the southward, it was thought most prudent to take an early advantage of their better habits and by strengthening the executive powers of the Government discountenance its leaning so much on the popular part of the Constitution."[1]

It is possible that Governor Carleton thought that the Loyalists could be trusted to govern themselves, and since they outnumbered all others ten to one, there was little danger of their liberty becoming license. He accordingly granted a charter to St. John but reserved to the Crown the right of appointing the chief executive officers, the mayor, sheriff, recorder and clerk. "He was," however, "rapped over the knuckles" for it by the Secretary of State.

Things were different in Nova Scotia. The ruling class was in a minority. Governor Lawrence wrote of the members elected to the first Assembly in 1758 that "he hopes he shall not find in any of the representatives a disposition to embarrass or obstruct his Majesty's service or to dispute the Royal prerogative," though "too many of those chosen are such as have not been the most remarkable for promoting unity or obedience to H. M. government here, or indeed that have the most natural attachments to the provinces."[2] Yet in Nova Scotia greater opportunity was given to the people to express their opinions through the grand juries. The township and county officials were all appointed by the sessions from the nominees of the grand juries. The grand juries could by presentments censure public officials and ask for public works. In certain cases the justices of the sessions could not act except upon the presentment of the grand jury. Further town meetings were regularly held until 1879, though for a time after 1770, when suspicion was rife, they were suppressed.[3] These and similar provisions are not found in New Brunswick. In only two Acts (and those were in the first ten years) was the grand jury required to make a presentment before the Court could act. One had regard to the altering of a road, the other to the preven-

[1] N.B. Hist. Collections, No. 6, p. 450.
[2] Murdoch, *History of Nova Scotia*, II. 353.
[3] Ibid. II. 493.

tion of thistles. The privilege of nominating officials seems not to have been enjoyed by the grand juries of New Brunswick.

French and English

Feudalism in Acadia, as in old Canada, was a mild copy of that of old France. The Governor was all-powerful and the seigniors were feeble and few. Governor Philipps, writing to the Duke of Newcastle in 1730, said, "Here are three or four insignificant families who pretend to the right of seigniories, that extend almost over all the inhabited parts of the Country."[1] In 1703 the King of France confirmed grants of seigniories at Cape Sable, Port Royal and Mines.[2] Mention is also made of seigniories at Cobequid and Chignecto. The rights of the seigniors in Nova Scotia became little more than claims for rents which, under English rule, were transferred to the Crown.

From the capture of Port Royal in 1710 the mainland of Nova Scotia was subject to the English. Protests and resistance on the part of the French, however, made government extremely difficult and finally led to the expulsion of the Acadians. Finally the second capture of Louisbourg in 1758 left the English the undisputed masters of the peninsula and the island. Prior to the founding of Halifax in 1749 there were two British garrisons—one to overawe the Acadians around Annapolis and the other at Canso to protect the New England fishermen. The seat of the government was at Annapolis, near the French settlements at old Port Royal (now Annapolis), Cobequid and Chignecto. The Governor's task was by no means an easy one. The willingness of the Acadians to comply with his demands varied inversely with their distance from the cannon of the fort, and the collection of rents and the settlement of disputes about land were the causes of perennial trouble.

The French were governed through elected deputies. Each community was required once a year, early in October, to select a number of deputies from the "ancientest and most considerable in lands and possessions." The community about Annapolis was required to select twelve, the other communities at least four

[1] Murdoch, *op. cit.*, Vol. I., p. 462.

[2] N.S. Archives, Vol. II. (Edited by MacMechan).

or five each. If the business on hand was very important a large number might be demanded. The Governor might refuse to accept the deputies, if they were not of the oldest and richest in the community.[1] After receiving the Governor's instructions the deputies were required both to publish them and to assist in carrying them out. Mascarene summed up their duties as follows:

1. Deputies having fixed times for meeting and consultation should act together in the execution of the orders, etc., of the Government in the interests of justice and of the good of the community.

2. They should "in their meetings make joint reply to the letters of the Government addressed to them in common and propose measures for the common good."

3. They should watch and keep in hand restless spirits who could turn the *habitans* from their duty and lead them contrary to their oath of allegiance. They were expected to restrain the Indians.

4. They were to enforce the regulations for keeping up the fences and to prevent the trespass of unruly cattle.

5. They were to concert measures for the improvement and upkeep of bridges and highways. They were to assign to each *habitant* what according to custom he must contribute in material, labour, carriage or payment.

6. They were to keep an account of the mills, those erected by the seigniors and those erected "without leave since the King has been in possession of the seigniory," and the dues that should be paid so that "the King may get his rights."

7. They were to arbitrate in land disputes, but appeal to the Governor-in-Council was permitted. They were to redress wrong and recover stolen property.[2]

In short the deputies were practically mediators, with little real power but great opportunity to facilitate or clog the work of administration.

In only one instance is there evidence of the appointment of an Acadian to be a justice of the peace.[3] Prudent Robicheau was the honoured name. A Prudent Robicheau, once before, had been

[1] N.S. Archives II. 89, 66, 74.
[2] Ibid. II. 241 *et passim*.
[3] Ibid. 172

rejected by the Governor as a deputy because of lack either of ancientness or possessions.[1]

The independent fishermen of Canso were not disposed to brook much interference from the Governor. Their local affairs were managed by justices of the peace (and it is worth noting) "with a committee of the people of Canso." These justices seem at least to have been acceptable to the people. On one occasion the Governor sent three commissions for justices of the peace in blank, which the other justices and probably the committee were to fill in.[2] On another occasion there was a vigorous protest against Captain Aldridge, who seems to have been anxious to introduce something not far remote from military rule.[3] The Governor reproved him.

The system of deputies (or rather hostages) for the French and justices of the peace for the English was a rather happy compromise. It was lacking in power to coerce, but it provided good machinery for informing the people of the Governor's instructions and the Governor of the people's wants.

Government by Courts of Sessions

In 1749 Governor Cornwallis in accordance with his instructions erected three courts of justice. "The first was a Court of General Sessions similar in its nature and conformable in its practice to the Courts of the same name in England." "The second was a County Court having jurisdiction over the whole province (then a single county) and held by those persons who were in the Commission of the Peace at Halifax."[4] "The third was a General Court. This was a Court of Assize and general jail delivery in which the Governor and Council, for the time being, sat as judges."[5] In 1754 a Supreme Court with a chief justice specially appointed for judicial work took the place of the General Court.

These three courts were primarily courts of law, and yet one,

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[1] N.S. Archives II. 59.

[2] Ibid. 121.

[3] Ibid. 89.

[4] In 1752 the County Court was abolished and Courts of Common Pleas (commonly called "The Inferior Courts") were erected in its place. These Courts were transformed in 1824 by the appointment of competent barristers as first justices.

[5] Haliburton, *Nova Scotia*, I. 163, 164.

the Court of Sessions, discharged important administrative functions, and another, the highest, was primarily not a court of law but an administrative body. To understand the Court of Sessions and its diverse duties one should turn to its history in England.

Unusual as is to-day the merging of judicial and administrative functions, it was not novel to Nova Scotians one hundred and fifty years ago. When Halifax was founded, the Governor-in-Council was a legislative, administrative and judicial body in one. Although it was relieved of its judicial functions in 1754 the chief justice still remained a member of the Council, became a governor, and exercised administrative powers until driven out of the Council in 1838 by Howe. The Council claimed the sole right to legislate until the chief justice questioned the legality of its Acts and caused the Secretary of State to direct the Governor to summon an Assembly. Still the Council continued to discharge executive and legislative duties until separation was forced in 1838. And it was not until 1848 that Howe completed his great task and made the Executive Council dependent upon the will of the majority of the Assembly.

In the courts of general sessions, it may be explained, the sheriff as appointee of the Crown was the executive officer; the justices were the guardians of the peace, also appointed by the Crown; and the grand jury was the people speaking through a select few. From the earliest times these courts were administrative as well as judicial bodies. Obviously the transition is easy from inquiries into how the King's peace was observed to inquiries as to measures to secure its better observance, e.g., the establishment of court-houses, jails, etc., bridges for the improvement of the King's highway and the like.

In 1749 Cornwallis appointed four justices of the peace for Halifax. In addition to these there were those who by virtue of their office were conservators of the peace. At one time the captains of the ships in the harbour were justices of the peace for Halifax. Ordinarily these justices were appointed by special mandate of the Governor. According to English practice they must be residents of the county. Their number seems to have been unlimited, and they held office during the pleasure of the Crown. In the days of Howe's battles the larger counties had

forty or fifty and when the Municipalities Bill became law some counties were credited with between one and two hundred. The general sessions of the peace were usually not well attended except by the few who took an active interest, but on occasions when some matter of widespread interest, such as the granting of liquor licenses or some questions of political moment were up, the attendance was large and the meetings frequently tumultuous.

The grand juries were composed of residents of at least three months' standing having freehold in the county of the clear yearly value of £10 or personalty of £100. The sheriff was required each year to prepare a list of those qualified to serve. Their names were to be written on similar pieces of paper and put in a box. At a stated time the names of those to be summoned to serve were to be drawn from the box. This method prevented jury-packing, and if it did not secure for the people the spokesmen whom they might have chosen it prevented the sheriff from stopping the questions of the people by summoning subservient tools.

The sheriff was appointed by the Crown each year. Previous to 1778 there was one provost marshal for the province of Nova Scotia. Thereafter a sheriff was appointed for each county with the usual powers of sheriffs in England. The chief justice or the presiding justice selected three names, one of which was the retiring sheriff (unless a majority of the justices of the peace protested) and the Governor-in-Council must select one of these as sheriff for the year.[1] In New Brunswick the provost marshal disappeared about 1790; and the appointment of sheriffs does not seem to have been hedged about with restrictions.

Local Divisions

There is considerable diversity in the three provinces with respect to municipal divisions. In all three the county divisions are the most important. New Brunswick was divided into counties, and the counties were subdivided into parishes, first by letters patent and later by Act of Parliament. In Nova Scotia the townships and settlements were the first to appear;

[1] N.S. Laws, 1795.

and later out of or about these the counties were constructed. Nova Scotia also recognized other units such as "Divisions" and "Districts." Prince Edward Island was divided into "Counties," "Parishes," "Lots," and three towns with royalties and commons attached.[1]

Nova Scotia.—The "Division" in Nova Scotia was merely a circuit for the Court of Common Pleas reconstructed in 1824. The province, excluding Halifax and Cape Breton, was divided into three divisions.

In 1749 there was but one *county*. When the question of representation in the Assembly came up, the township as well as the county was considered worthy of representation.[2] In 1833 Murdoch wrote: "Some of the counties are divided into *Districts* to facilitate the local business of the county, giving each district a set of public officers nearly equivalent to those of a separate county," e.g., a court of general sessions of the peace.[3] "In Halifax county there are three districts—Halifax proper, Colchester, Pictou, each of which has every arrangement for the administration of justice, the registry of deeds, etc., as if it were a separate county wanting only the name and a county representative in the Assembly."[4] "Each district," says Haliburton, "is or should be furnished with a court house, but the jail belongs to the county. The sheriff's authority is commensurate with the county and the commissions of the peace extend throughout the same. The localities of the juries both in real and personal have also a reference to the county; and the election of representatives is in no way affected by this local arrangement of districts."[5]

[1] The term "Settlement" was used with few exceptions in eastern Nova Scotia in place of "Township," the common term in the western part. The term "Electoral District" was adopted in 1847 to denote what is now called a "Polling Section." The "Electoral Division" to-day is the constituency which is represented in Parliament. For much valuable information about these and other matters, I am greatly indebted to Mr. A. A. McKay, of Halifax.

[2] In 1759 representation was granted to five counties—Halifax, Lunenburg, Annapolis, Kings and Cumberland, and to five towns or townships—Halifax, Lunenburg, Annapolis, Horton and Cumberland. Representation was granted to the counties of Queens in 1762, Sunbury 1767, Hants 1781, Shelburne 1784, Sydney 1784 (renamed Antigonish 1863), Cape Breton 1820, Yarmouth 1836, Digby 1837, Pictou 1836 and Colchester 1836.

[3] Haliburton, *op. cit.*, II. 8.

[4] Murdoch, *Epitome of N.S. Laws*, Vol. III.

[5] When Haliburton wrote, in 1829, Halifax was divided into three districts; Sydney (now Antigonish) into Sydney and Guysborough; Annapolis into Annapolis

"The settled parts of the province," wrote Murdoch in 1833, "and those where settlements are attempted have been further divided into *Townships,* some as large as the smaller counties and many more of smaller dimensions, and it is probable that this mode of division will be extended over the whole surface of the country as it is a favourite manner of allotment in North America, and it is very useful as a guide to the arrangement of the representation, the local assessment and a variety of other purposes."[1] Haliburton stated in 1829 that a "township contains no certain definite quantity of lands nor assumes any prescribed shape as in Upper Canada where it is generally understood to extend nine miles in front and twelve miles in the rear; nor is it endowed with all those various corporate powers which the townships of New England possess, beyond the election of a representative; which privilege is not enjoyed by all. The inhabitants have no other power than holding an annual meeting for the purpose of voting money for the support of their poor."[2] Governor Lawrence in his proclamation of 1758 declared that "townships are to consist of 100,000 acres." This seems to have been the usual size for those in the valley and on the Atlantic coast.[3] On the other hand, the three townships of Pictou county contain over 200,000 acres each. Governor Lawrence also declared that every township containing fifty families would be entitled to send one representative to the Assembly. At the first Assembly it was proposed to restrict the qualification to twenty-five voters, but the Home Government insisted on fifty.[4] Since Lawrence's proclamation was addressed to New Englanders it is probable that their views about townships

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and Digby; Shelburne into Shelburne and Yarmouth; Cape Breton into Northern, Southern and Western, all of which have since been converted into counties. But other districts have been made—Barrington in Shelburne (1846), Argyle in Yarmouth (1856), Clare in Digby (1847), St. Mary's in Guysborough (1840), Chester in Lunenburg (1863), and East and West Hants (1861). These districts are now separate municipalities. Their separation, due in part to distance, may also be traced to difference in the origin of the inhabitants. Argyle and Clare are French, Barrington and Shelburne represent pre-loyalists and loyalists; Chester and Lunenburg, New Englanders and Germans; Guysborough and St. Mary's, New Englanders and Scotch.

[1] Murdoch, *Epitome* I. 29.

[2] Haliburton, *Nova Scotia*, II. 9[illegible]

[3] Chester, for example.

[4] Murdoch, *History*, II. 334.

were adopted.[1] In 1829 the province contained 10 counties (5 counties being subdivided into 12 districts) and 50 townships.

Murdoch's expectation that the "townships" division would extend over the whole province has not been realized. To-day they are important only as marks of land grants. The decline of the "township" began with the Electoral Act of 1847. Previous to this, simultaneous elections had been impossible because of the difficulty of polling the entire vote of a township or settlement in one day. To meet this difficulty the counties were divided into electoral districts or polling sections. Where townships existed this Act respected their boundaries in the setting off of the electoral districts. When no townships were recognized the electoral district provided a useful unit. In time the polling section became the constituency of a county councillor, and a poor division. In 1843 and 1844 two large and unwieldy townships in Pictou county were subdivided for poor purposes. In 1855 an Act provided for the incorporation of townships. No advantage was taken of its permission. When the right of sending a representative to the Assembly was taken from the townships in 1857 or 1858 the township lost the last shred of political importance. Henceforth it was but a name known to those who were interested in land titles.

New Brunswick.—Before New Brunswick was erected into a separate province the county of Sunbury and the township of Sackville were granted representation (1767) in the Assembly of Nova Scotia. The boundaries of the parishes or towns of what afterwards became the county of Westmorland were defined by the boundaries of the lands granted by Nova Scotia.

By letters patent in 1785 Governor Carleton set off the boundaries of the counties of St. John, Westmorland, Charlotte, Northumberland, Kings, Queens, York and Sunbury; and for the better administration of justice subdivided them into towns or parishes. The Legislature confirmed this division in 1786.[2]

[1] The townships rapidly increased in number. In 1757 two were recognized as entitled to send representatives to the Assembly—Halifax and Lunenburg. Two years later Annapolis, Horton, and Cumberland were included. Then followed Truro, Onslow, Cornwallis, Falmouth, Newport, Liverpool and Granville (1765), Yarmouth and Sunbury (1767), Londonderry (1770), Barrington (1774), Shelburne (1784), Amherst and Windsor (1785), Digby (1784). There were other townships which were not entitled to representation, such as New Dublin (1765), and Chester (1759).

[2] In the Consolidated Statutes of 1903 the boundaries and dates of the erection of the various counties and parishes are given.

The plan was simple. The whole province was divided into eight counties. The settled portions were Sunbury on the St. John, Westmorland west of Nova Scotia, and St. John, the landing-place of the Loyalists (1783). The new counties were set off and Sunbury was the residue. Some of the boundaries were defined with reference to townships, e.g., St. John began from Hopewell township, York from Maugerville, Queens from Burton. The counties again were divided into "towns or parishes." The term "parish" rapidly supplanted that of "township." The "township" may be traced to Massachusetts, the "parish" to New York and Virginia. In England the parish was of course originally an ecclesiastical division, the township a civil.

The blending of the ecclesiastical and the civil appears as late as 1790 in New Brunswick. Governor Carleton in a letter (dated Aug. 20th, 1790) to the Secretary of State says of the provision made for education and religion: "There are now six ministers of the Church of England, having salaries from the Society for the Propagation of the Gospel, in addition to £100 allotted to each by an annual grant of Parliament, the glebe lands still being unproductive. The province has been divided into eight counties with thirty-nine parishes, all of which, however, do not require a permanent minister at present."[1]

It is worth noting that in New Brunswick the county is subdivided, and that in Nova Scotia the county is apparently a group of townships or settlements, as Mr. McEvoy states to be the case in Ontario.[2] This difference had important consequences. It gave the township an independence in the public mind not possessed by a mere subdivision of the county (the parish). This is seen in the town meetings which were a feature of the Nova Scotia townships and electoral divisions down to 1879, although temporarily suppressed in 1770, as already remarked, through fear of revolution. This feature survived in the charters granted to such towns as Dartmouth (1873), Pictou (1873), New Glasgow (1875), which required an annual meeting of the ratepayers to receive the reports of the

[1] Can. Archives, 1905, N.B. State Papers.

[2] McEvoy, *The Ontario Township*, p. 11.

town's officials and to authorize expenditures. In 1905 again, for example, Dartmouth held a town meeting to consider the increase of water supply and other matters. There were parish or town meetings in New Brunswick, particularly in the eastern portion, but they seem to have been due partly to the Nova Scotian example and partly to the movement for responsible government which secured an Act (in 1850) giving parishes or towns the privilege of electing their officials. This privilege seems not to have been generally taken advantage of, for provision is made for appointment by the justices should there be no election; and in 1854 the consolidation of the statutes makes no mention of election.

The care of its own poor was the first, the primary and, as Haliburton said in 1829, practically the only duty of the parish or township; yet it is worth noting that the early schools in New Brunswick were parish schools and that the trustees were parish officials. The Superintendent of Education in 1904 recommended a return to the larger unit for school purposes, and suggested the parish as a suitable unit.[1]

Prince Edward Island.—The Island was divided into 67 lots, usually containing about 20,000 acres each. These were grouped into three counties and in each county a town site with royalty and common was laid out for a capital. "The intention was that the man who held a lot in the town should be allowed a lot in the royalty for pasturing purposes. The common was situated between the town and the royalty and was for pasture purposes in common."[2] The counties were subdivided into 14 districts or parishes. The "parish lines are but little recognized." "These local divisions became practically useless and are seldom mentioned now except in legal proceedings connected with old land titles."[3] With the exception of the capital city, Charlottetown, there is but one other municipality, the town of Summerside. Local affairs are thus—doubtless on account of the smallness of the island province—in the hands of the provincial Legislature and its local officials.

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[1] N.B. Education Report, 1904, p. xvi.

[2] Croskill, *Prince Edward Island*, pp. 16, 17.

[3] Bourinot, *Local Government*, p. 68.

Electoral and School Divisions

For electoral purposes county divisions are recognized. For the federal Parliament each county is entitled to one representative unless the population be small. Then if two small counties be adjacent they are combined, e.g., the Queens-Sunbury, Kings-Albert constituencies in New Brunswick, and the Queens-Shelburne in Nova Scotia. If the county is very large it is given two representatives, e.g., Halifax, N.S., St. John, N.B., and Queens, P.E.I., or the county is divided into two ridings, e.g., Cape Breton, N.S., North and South. For the provincial Assemblies in New Brunswick and Nova Scotia the county is again the unit and the number of representatives is adjusted to population. In Prince Edward Island the unit is a district of a county.

For rural municipalities in Nova Scotia the unit is the "electoral district" determined by the legislation regulating elections for the provincial Legislature. The term "electoral district," it may be remarked, began to displace "township" as early as 1854. In New Brunswick the parish is the electoral unit. In Annapolis, N.S., the term "ward" appears.[1] It is possible that this is a reminiscence of the old town or township divisions. Such names as "street" and "square" are still found attached to the names of country roads and sections in this part of the province.

The divisions for school purposes respect county lines. In New Brunswick they ignore the parish, which in early days was the unit. In Nova Scotia the unit is called a "section," in New Brunswick a "district." The term "district" in Nova Scotia is applied to the area over which the school commissioners have jurisdiction. These commissioners, once clothed with considerable powers, have been reduced to the (alas! not harmless) work of dividing and subdividing school sections. The school section in Nova Scotia or district in New Brunswick seems to have been laid out with a due regard to the walking powers of a child. Apparently two and a half miles were regarded as the utmost which a child could be expected to walk to and from school each day. Accordingly school sections or districts were usually four or five miles in length. In the sixties

[1] Calnek and Savary, *History of Annapolis*, p. 316.

and early seventies, when the tide of immigration was flowing strongly into these provinces, it was not unreasonable to expect that in time these sections would be filled with a large school population. The westward movement of population, however, has disappointed these hopes, and the results have been disastrous to the rural schools. There seems to be but the one solution of regrouping school sections, either by consolidation of school equipment and teaching power or by enlarging the administrative areas to perhaps the New Brunswick parish or Nova Scotian district, so that the burden of taxation may be reduced to a minimum and equalized.

Appointment of Local Officials

Nova Scotia.—In Nova Scotia various methods of appointing local officials have been followed at different times. Before the establishment of courts of sessions the Governor-in-Council shared the privilege with the town meeting. Upon the institution of the courts the appointment of the great majority of the officials was delegated to them, in some cases without restriction, in others subject to the nomination of the grand juries. In a few instances the grand juries appointed, subject to the ratification of the justices. Of the five methods: (1) the Governor-in-Council, (2) popular election, (3) the court of sessions, (4) the sessions upon nomination of the grand jury, (5) the grand jury subject to the ratification of the justices, the most common was the appointment by the sessions on the nomination of the grand jury. The Governor-in-Council appointed the sheriffs, coroners, justices of the peace, commissioners of sewers and dykes, gaugers (from 1761 to 1769), commissioners for schools in each county and district (from 1828).

In January, 1751, the Governor-in-Council ordered that the "town and suburbs of Halifax be divided into eight wards and the inhabitants be empowered annually to choose the following officers for managing such prudential affairs of the town as shall be committed to their care by the Governor-in-Council, viz., eight town overseers, one town clerk, sixteen constables, eight scavengers."[1] In 1763 the town meeting (which was held twice a year) chose the assessors of the poor rate. This practice was

[1] N.S. Archives (edited by Akins), I. 639.

also authorized by an Act passed in 1851. The assessors appointed the collectors of the poor rate, which, wrote Murdoch in 1833, "is the only regular fund managed by the township authorities without the intervention of the sessions and grand juries of the county."[1] From 1859 to 1878 the town meeting could choose the collectors.

In 1762 the grand juries in sessions were empowered to appoint annually cullers and surveyors of dry fish, surveyors of lumber, and surveyors of cordwood;[2] and three years later the appointment of the county treasurer, subject to certain restrictions, was placed in their hands. The usual method of appointment by the sessions required the juries to nominate. At first twice as many candidates as there were offices were to be nominated; but later (1811) the number was to be as many as the justices in sessions might direct, "as the numbers before limited by law were found insufficient."[3] Apparently the juries by nominating impossible candidates could force the justices to appoint those whom they desired.

The officials appointed by the justices on the nomination of the grand juries, as given by Murdoch[4] in 1832, with the dates of the Acts giving the power were as follows: In 1765 surveyors of lines and boundaries of townships and overseers of the poor ("both offices united in the same persons"), a town clerk, constables, surveyors of highways, fence viewers, clerks of market, poundkeepers, cullers and surveyors of fish, surveyors of lumber, sealers of leather, gaugers of casks, hogreaves (1792), measurers of grain, salt, coals, inspectors of lime and bricks, inspectors and repackers of beef (1794), surveyors and weighers of hay (1777), inspectors of flour and meal (1796), inspectors of red and smoked herrings (1798), inspectors and weighers of beef (1829), inspectors of thistles (1791), and inspectors of butter in Cumberland county (1802). The local trustees of schools were, according to the Act of 1828, appointed by the commissioners of schools who were nominees of the Governor-in-Council.

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[1] Murdoch, *Epitome* I. 138.
[2] Ibid.
[3] Ibid.
[4] Ibid.

After Howe became prime minister an Act was passed in 1850 dividing Halifax into townships, and giving each township the right to elect a warden and four councillors who were to have all the powers "now exercised by the justices of the peace"; and empowering the ratepayers at the annual meeting to elect all township officers whether "now appointed by the sessions, town meetings or others as considered necessary." This Act was permissive and seems never to have been put into effect. A similar Act (1856), intended for the other counties, was put into effect in but one county, Yarmouth, and then only for three years.

The method of appointment by the justices on nomination by the grand juries continued until incorporation was made compulsory for all counties and districts in 1879.

New Brunswick.—Governor Carleton and the Assembly from the first decided to give the people, either directly or indirectly through the grand juries, as little power as possible in the appointment of local officials. In the draft of the Highways Bill submitted to the House in 1786 provision was made for the nomination of road surveyors or commissioners of the highways by the grand juries. This provision was struck out before the bill became law.[1] New Brunswick was to "improve upon the constitution of Nova Scotia."

The justices of the peace were empowered to appoint, at the first sessions of the court each year, "out of every town or parish in the said county three overseers of the poor, a clerk of the town or parish, a clerk of the market, a sealer of leather, three assessors, two or more constables, two or more fence viewers, a sufficient number of poundkeepers, cullers and surveyors of fish, surveyors of lumber and cordwood, gaugers of casks, hogreaves, surveyors and weighers of hay, surveyors and examiners of any staple commodity and (in 1805) parish school trustees.

In addition the Governor-in-Council appointed a great many officials, e.g., commissioners of sewers (1786), supervisors of great roads (1822), commissioners for the almshouse in Fredericton (1822) and Northumberland (1828), grammar school trustees (1829), firewards in Fredericton (1824), Newcastle and Chatham (1828), St. Stephen (1833), boards of health

[1] MS. Records of the First Assembly in the Legislative Library, Fredericton.

(1833), marine hospital trustees (1822), commissioners to collect dues for disabled seamen (1826), commissioners for the provincial House of Correction (1841), also for the asylum for the insane.

In 1850 the parishes were granted the privilege of electing the town or parish officials hitherto appointed by the sessions, except the treasurer, auditors, trustees of schools, overseers of fisheries, inspectors of fish, wharfingers, port warden, harbour master, pilots and firewards, who were to be appointed as before by the sessions. In the following year the same privilege was granted to parishes organized as municipalities. But failing election, appointment was to be made by the sessions or the council. When the statutes were consolidated in 1854 this privilege of election was withdrawn from the parishes. Probably little use had been made of it. It is possible that this introduction of the township idea was suggested by what Howe had done in Nova Scotia. It is well to remember that it was in 1848 that Nova Scotians gained responsible government.

Prince Edward Island.—As Bourinot remarks, "no system of local government ever existed in the counties and parishes as in other parts of America. The Legislature has been always a municipal council for the whole island."[1] In 1833 the representatives of Charlottetown in the Legislature were instructed to summon the inhabitants to vote money for local purposes and to appoint assessors and collectors. The following year the inhabitants of each school district were required to choose five trustees.

The Powers and Municipal Labours of the Sessions

Nova Scotia.—In the exercise of their administrative functions the justices of the peace appointed officials, ordered assessments and controlled expenditures, controlled certain licenses such as those for the sale of liquor, and made regulations about a variety of subjects. The list of subjects is similar to that given below for New Brunswick. In New Brunswick the justices in sessions were less restricted in the exercise of their powers by the grand juries than were their fellow justices in Nova Scotia.

[1] *Local Government*, p. 69.

In 1877 the committee appointed to revise the statutes prepared a draft summarizing the powers of the courts of sessions.[1] But apparently after the draft had been printed and submitted to the Legislature it was decided to make the Municipalities Act compulsory and to abolish the courts of session. In that draft these courts were (1) given power to appoint and define the duties of the parish officials; (2) given charge of jails, lockups, workhouses or almshouses (unless entrusted to special commissioners) and village police; (3) required to prevent vice, disorders and disorderly driving, Sabbath profanation, nuisances, noises; (4) required to regulate the sale of liquor, circuses, exhibitions; (5) required to make regulations concerning trespass by domestic animals, the marking of cattle, pounds, dog tax, destruction of mad dogs, noxious weeds, fires, bush burning, trucks, depositing of ballast, markets, measuring and inspecting such commodities as bread, salt, coal, hay, iron, lumber; (6) required to have charge of ferries, streets, public wharves, bridges, booms, timber driving, commons, marshes, school reserves, river banks. At an earlier date they had had charge of inland fishing (1799), grazing on the commons (1814), parish schools (1823), lunatics (1824), the prevention of infectious diseases (1799).

The care of the poor was a parish charge and was in the hands of overseers appointed by the sessions.

The sessions assessed upon the presentment of the grand jury of the county setting forth the sums required for (1) the expenses of criminal justice, such as the building and maintenance of county court houses, jails, stocks, pillories, pounds, conveyance and support of prisoners, salaries of clerk of the peace and jailor; (2) the support of the poor; (3) the building and repairing of bridges and other public works authorized by parliament; (4) the expenses for preventing fires. "The sessions apportion the sum presented fixing on each township and settlement the portion they think it should bear" (1765).[2] It also appointed two collectors and three assessors for each township on the nomination of the grand juries (1777). The moneys

[1] Through the courtesy of Mr. T. C. Allen, Clerk of the Pleas, I was permitted to examine a copy.

[2] Murdoch, *Epitome* I. 135.

collected were handed to the treasurer, who was chosen by the grand jury, and approved by the justices in sessions, to whom also the treasurer accounted quarterly (1813), and to whom appeals lay from the assessors.

Other sources of revenue were from rents from public buildings, fines and forfeitures, license fees from hawkers and pedlars (1782) and liquor sellers (1787). The liquor license fees were collected by a clerk of licenses appointed in Halifax by the Governor, elsewhere by the justices of the peace, who selected one of three candidates nominated by the grand jury. Three-fifths of the license fees (liquor and hawkers) in Halifax went to the commissioner of streets; two-fifths to the police department. When money was to be borrowed permission had to be received from the Legislature.

The various officers were accountable to the sessions for the moneys entrusted to them. The grand juries had the right to inspect the accounts and to make a presentment upon the administration of the justices or their officials. The way in which the latter discharged their duties in Halifax was exposed in a painful manner by Howe in 1835.[1]

New Brunswick.—The sources of revenue and the administration of it were similar to those of Nova Scotia. Apparently (though the evidence is not clear) the grand juries in the early days were not so influential in New Brunswick as in the sister province. In 1833 the justices in session were required to cause accounts of public moneys to be laid before the grand jury, and the grand jury was empowered to "make such presentment thereupon as they see fit." In 1850 stress was laid upon the recommendation of the grand jury for buildings and contingencies as a necessary condition to an assessment by the sessions. Further, the accounts of the county and parishes were to be laid before the grand jury, when the town or parish officers were to be appointed. Also at the time of the election of town or parish officers, the overseers of the poor, collectors of rates, and commissioners of highways were required to lay their accounts before the ratepayers for examination. The growing influence of the grand jury and the open examination of accounts were due to the demand for representative government.

[1] Howe, *Speeches and Letters*, I. 21 *et seq.*

It is worthy of note that to-day in Nova Scotia and New Brunswick each poor district or parish must bear the cost of the maintenance of the poor who have "settlement" within it. Every other charge, even the support of the insane poor at the provincial hospital, is a county charge. The sole exception in New Brunswick is the charge of opening up a new road.

Reform

In 1835 Joseph Howe published in the *Nova Scotian* a number of letters attacking the Halifax County Sessions, for which he was arrested on a charge of criminal libel; he was, however, finally acquitted in triumph in spite of the charge of the judge to the contrary. The repeated declarations of successive grand juries and the chorus of popular approval that greeted him seem to warrant one in believing that Howe's severe arraignment was justified. He charged[1] them with unfair assessment, mismanagement of public accounts, "miserable but costly corruptions of the Bridewell (Prison) and Poorhouse," inefficient and dilatory administration of justice, all of which were supported by quotations from reports of grand juries and of a special committee appointed by the Governor-in-Council.

In its report published shortly before Howe's trial, the grand jury stated that "but £36 of the whole assessment of the year had been collected and that from persons much less able to pay than many who stand in the list of defaulters." Howe gave examples of the effect of the failure of the sessions to collect rates in the county outside of the city and from a large number of favoured or careless ratepayers. Although the city contained 14,439 people as compared with 10,437 in the county, from 1825 to 1835 not one shilling had been received from the county outside the city. Apart from the large amount of uncollected taxes, the management of funds collected was careless and irregular. Instead of paying into the treasury, collectors of taxes were permitted to pay to other persons, who appropriated the funds to suit their own convenience, causing much hardship to civic officials and creditors. "The credit of the county is absolutely so bad that an advance of forty or fifty per cent. is required in all purchases made on account." The grand jury

[1] Howe, *Speeches and Letters*, I. 20 *et seq.*

returned the county treasurer's accounts as being incomprehensible, not so much from fault of the treasurer as from the confused manner in which public accounts were kept. Examples of the inefficiency of the police, of the unequal administration of justice and of the indifference of the magistrates were cited. Although the law required all magistrates to attend general and quarter sessions under penalty of removal from office, "from the record of five years it appeared that not more than three justices had usually attended the general sessions of the peace in Halifax, frequently but two and sometimes only one." The grand jury, which in effect was the organ of the people, Howe declared had been frustrated in its attempts to detect and remove abuses. Sometimes the magistrates refused it access to public documents and at other times ignored its recommendations. Finally the grand jury refused to assess, and thus brought matters to a head.

It should be said in fairness to other courts of sessions that there is little doubt that Halifax stood alone in its bad preeminence. Yet enough remains to show that the system had many serious defects. It was not, however, unacceptable elsewhere. For nearly thirty years a permissive Act for municipal incorporation held open a door of escape for the several counties in Nova Scotia and New Brunswick. In Nova Scotia one county only took advantage of it and that for but a brief period.

Government by Elective Councils

Nova Scotia.—Responsible government for the province logically implied self-government in the municipalities. In Nova Scotia, since 1763, the township had the right to meet and vote money for the support of the poor and to elect the assessors required to get this money. This right the townships (or settlements, as they were sometimes called) continued to enjoy until 1879.

It was natural for Howe to begin at home with his municipal reform. Halifax city had been given the right to govern itself in 1841. Halifax county, however, was still governed by the court of sessions when the victory for responsible government brought Howe into power. Whatever the cause, whether it was Howe's New England ancestry, or the prominence of the town-

ship in western Nova Scotia, or the difficulty of combining the very diverse and widely separated sections of Halifax into one county, Howe adopted the township as the unit of municipal government in the Act of 1850. This Act provided for the appointment of commissioners to divide Halifax county into townships, each township to elect a warden and four councillors, who were to assume all the powers and duties of justices of the peace for the county. But little or nothing seems to have resulted from this Act.

In 1855 there was passed an elaborate Act providing machinery for municipal government in the four counties of Yarmouth, Annapolis, Kings and Queens, the four counties in which New England influence was strongest. The following year this restriction was removed and all other counties and a number of districts, such as the French districts of Clare and Argyle, the Scottish St. Mary's and the pre-loyalist Barrington were given an opportunity, should they wish to transfer the government of the locality from the quarter session to elective councils.

In the same year another Act providing for the self-government of townships was passed. A reeve and four councillors were to be elected by the township, and the reeves in the county were to form the county council. The township councils were to exercise the power of county councils with reference to roads, the poor, prevention of vice and assessment, with the following exceptions. The expenditure of the government grants for roads, the erection of bridges, the control of liquor licenses, the regulation of ferries, wharves, markets and fairs were withheld from them. The annual town meeting was expressly provided for.

Both the County and the Township Acts were permissive and remained in force until the compulsory Act was passed in 1879. Yarmouth was the only county to apply for the privileges of the Act. But after three years' trial, in 1858, it petitioned for the old order of local government; yet Yarmouth has always been noted for its sympathy with New England ideas.

The towns were more anxious to secure the privilege of self-government, more particularly the privilege of assessing for local purposes and of borrowing money. Each town sought incorporation by a special Act. Pictou and Dartmouth in 1873,

Truro and New Glasgow in 1875, Windsor in 1878, Parrsboro in 1884, Lunenburg, Sydney and North Sydney in 1885, and Kentville in 1886 were thus incorporated. The Towns Incorporation Act, which was passed in 1888, was made applicable to all the towns then incorporated, the city of Halifax being exempt, to which is now added the city of Sydney, C.B. Since then minor amendments have been passed, but the principles of the Act remain intact.

New Brunswick.—Self-government in local affairs came earlier to New Brunswick. St. John received a charter in 1785, Fredericton in 1848, while in 1850 the town meeting was given the power of electing parish officers, and in 1852 a permissive Act for elective county councils was passed. In 1877 this permissive Act became compulsory. When Nova Scotia's compulsory Act was passed in 1879 not one county was incorporated but in New Brunswick six had already passed out of the control of the courts of sessions. In New Brunswick the earliest to become incorporated were York, in 1857, Carleton, prior to 1865, and Sunbury, prior to 1870. The Act of 1850 reserved for the magistrates the appointment of the treasurer, auditor, fishery and harbour officials; but it also required a statement of the public accounts to be laid before the grand jury when the appointments were to be made. A presentment from a grand jury was made a necessary condition of an assessment for public buildings and contingencies.

The towns were naturally more eager for incorporation. Fredericton received it in 1848, Woodstock in 1856, Portland and St. Stephen in 1871, Moncton and Milltown in 1873, Bathurst in 1885, Marysville in 1886, Campbellton in 1888. The Towns Incorporation Act was passed in 1890, and under it the younger towns have been incorporated, those previously incorporated being governed by their charters. Villages may also be incorporated for certain purposes.

Until 1896 there had been a steady movement in the province towards decentralization, towards greater local control. Since then a movement towards centralization has become very evident. In 1898 the Governor-in-Council received power to appoint not only the provincial board of health, but also the chairmen of the local boards, and further to levy local assess-

ments when these boards recommend it. This was clearly dictated by the desire to secure more efficient and prompt action when an epidemic is threatened. In 1899 the appointment of the chairmen of the revisers of electoral lists was taken from the councils and given to the Governor-in-Council. The Liquor Act of 1900 withdrew from the councils the appointment of commissioners to issue licenses and of inspectors and placed it in the hands of the Governor-in-Council. In 1905 the Highways Act required the municipalities to assess for the roads but placed the disposal of that money in the hands of the Governor-in-Council, to whom also was given the appointment of supervisors of roads. And lastly, the superintendent of education recommended a return from the small school districts to the parish as the unit. With these measures of centralization goes the growing practice of placing special duties, hitherto enjoyed by councils, in the hands of appointed commissioners, for example, the management of certain almshouses and of town and city schools.

Whatever be the cause, whether a demand for greater efficiency, or a desire for greater patronage, or a distrust of elected bodies as agencies for executive work, the fact remains that an important part of the machinery of government in local affairs appears to be passing away from the residents of the locality; at the same time one is surprised at the apathy or tacit approval which greets the change. We may purchase efficiency or patronage at too great a price. Direct popular government is indeed an educational agency that should not be valued lightly.

Municipal Organizations

Rural municipalities, towns and cities are incorporated under different Acts. The Municipalities Act applies to counties and, in the case of Nova Scotia, to districts as well, i.e., to divisions (never more than two) of a county. The Towns Incorporation Act of Nova Scotia provides for towns whether previously or subsequently incorporated: in New Brunswick the Towns Incorporation Act applies only to the towns incorporated subsequent to the passing of the Act. Each city has a special charter.

In Nova Scotia six of the eighteen counties are divided into

two districts, making altogether twenty-four rural municipalities. These are again divided into polling districts, each of which is entitled according to population to at least one representative in the council. Only in one instance has a polling district as many as three representatives. The qualifications of municipal councillors and of voters are the same as those required of members and voters for the House of Assembly, except that since 1887 the franchise has been given to unmarried women, assessed for $150 realty or $300 personalty.

The elections are held on the same day throughout the province. Councillors previously sat for one year; but since 1892 their term is three years. Like the provincial Assembly the council chooses its presiding officer (the warden) at the first session after election, grants an indemnity ($2 a day and 5 cents a mile) to its members and an additional sum ($50) to the warden. It has power to assess for enumerated purposes, chief among which are the support of the poor, prevention of disease, administration of justice, court house and jail, protection from fires, bounties for certain wild animals, ferries and markets, roads and bridges (not exceeding $1,000 unless with the approval of the Governor-in-Council). Districts within a municipality may petition for the privilege of assessing for specified purposes and be rated accordingly. Loans for current purposes are limited to $2,000 subject to the approval of the Governor-in-Council. A contingent fund of $500 is permitted. All by-laws are, however, subject to the approval of the Governor-in-Council.

The Municipal Act for New Brunswick differs but slightly from the Nova Scotia Act. Each parish of a county is entitled to two councillors. The Act provides for a one year term of office unless the council decides upon biennial elections. In St. John county the elections are triennial. The indemnity is larger in New Brunswick and the property qualifications are higher.

The powers are similar; but the approval of the Governor-in-Council is not required for by-laws. All officers are appointed by the council for one year except the clerk and treasurer, who, however, are removable by the council. In certain parishes the appointment of constables is not made in the usual way. In the parishes of Dorchester, Shediac and Moncton, of the county of

Westmorland, the French ratepayers elect three assessors, one collector and three overseers of the poor to assess and collect from the French of these parishes the poor rate and to care for the French poor.

The Towns Incorporation Act of Nova Scotia was passed in 1888, revised in 1895, and embodied in the consolidation of 1900. It requires a majority vote of the ratepayers of the town in favour of incorporation before such incorporation can be granted by the Governor-in-Council. A further condition was subsequently added. There must be at least 700 persons dwelling within an area of five hundred acres of land.

A mayor and six councillors are to be chosen at the first election by the entire town. The council has power to divide the town into wards and assign two councillors to each ward, these to be elected by the ratepayers of the ward. The mayor holds office for one year, the councillors for two years; but one-half of the council retires each year.

Both mayor and councillor must be British subjects, at least twenty-one years of age, and ratepayers, the mayor's assessment reaching at least $500 real or $1,000 personal property.

The council has power to assess for the poor, schools, streets, sewers, water, fire, the courts, police, salaries and the county fund. But before it can grant a bonus, or make a permanent loan, the sanction of the town meeting and the authority of the Legislature must be secured. A loan for school buildings need not be specially authorized by an Act of the Legislature. Exemption from taxation cannot be granted unless sanctioned by a special Act of the Legislature. And all the by-laws or ordinances passed by the town council are subject to the approval of the Governor-in-Council.

The council appoints all officials save the stipendiary magistrate, who is appointed by the Governor-in-Council. The town clerk holds office during good behaviour. The town solicitor may be dismissed by a two-thirds vote. But an official who holds office during good behaviour may appeal to a judge of the County Court or Supreme Court to call upon the mayor and town council to show cause for his dismissal or the reduction of his salary. All other officials save one are appointed for one

year. The council appoints three revisers to revise the electoral lists.

The provisions of the Towns Incorporation Act of New Brunswick differ but slightly from those of Nova Scotia. For instance, the Act expressly provided that the services of mayor and aldermen shall be honorary. This is the practice in Nova Scotia, and I believe everywhere in the Maritime Provinces except in St. John, where both mayor and aldermen receive allowances, and in Halifax, where the mayor receives $1,000 a year. The Act further requires the election of the aldermen by the entire town and not by wards, each elector having the right to vote for two aldermen in each ward. This practice has recently been adopted in the cities of St. John and Fredericton. The innovation has not proved to be the success hoped for, and many hold that the ward system gave as good or better results.

In New Brunswick the town councillors hold office for one year and consequently all retire simultaneously. In Nova Scotia the practice of administrative bodies, such as directorates, has been followed and only one-half (in Halifax city one-third) of the council retires each year.

The financial relation of the town to the municipality within which it is situated has always been a source of trouble. The relative amounts of the contributions of town and municipality towards the support of courts, court house and jail, and in some cases the support of the poor and in nearly every case the county school fund, have always been difficult to adjust. This is explained partly by the shifting of population from the country to the town and partly by the tendency in the towns to assess property up to its current market value in order to keep the rate low. Two plans of adjustment have been followed. The arbitration plan is favoured in Nova Scotia. A joint board of arbitrators appointed by town and municipality agrees upon the proportion of the expense which is to be borne by each. In New Brunswick the city and county of St. John form one municipality and the city alone is another. This plan was suggested by New York and was adopted from the first. The Towns Incorporation Act has applied the same principle to other municipalities. In St. John the mayor and fifteen aldermen selected by the city council, with eleven councillors chosen

by the parishes, constitute the county council. Elsewhere in New Brunswick the town is given representation in the county council to the extent of three or four councillors. Two of these are elected by the parish within which the town stands, in some cases by the ratepayers outside the town limits, in others apparently without such restriction; and one or two, as the case may be, are selected by the town council.

The New Brunswick Act gives any town the right to expropriate the property of the lighting or water and sewerage companies if a majority vote of the ratepayers is recorded in its favour. While municipal ownership of the water supply is practically universal and has proved an unqualified success in the cities and towns of the Maritime Provinces, only about twelve, and these are not the larger cities or towns, have undertaken the lighting of the towns. In every case the lighting plant is for electric lighting, not gas. In Fredericton the town does the municipal lighting. An examination is now being made of the water powers of Nova Scotia available for the development of electric energy. Thus far no city or town owns or operates a street railway. In Halifax the operating company gives a certain percentage (four per cent.) of the gross receipts to the city and pays taxes on its real and personal property. Three or four companies operate an intertown service, for example, between St. Stephen, Milltown and Calais; Sydney, Glace Bay and adjacent towns; North Sydney and Sydney Mines; New Glasgow and surrounding towns. In Yarmouth and Moncton street railways have been operated and abandoned.

Local Problems

Revision of electoral lists, liquor license control and assessment are responsible for most of the local municipal conflicts. As the burdens of taxation increase, the inequalities of the systems become more galling, and the demand for reform more insistent. The control of the sale of liquor has divided the community into two factions, while the revision of the electoral lists opens and keeps open the door to party politics and determines whether a road shall be ditched or a sewer laid according to the great principles of rival national policies.

Electoral Revisers.—Accordingly the revision of the electoral lists is jealously watched. The provincial lists are now used for federal elections, and are prepared by local authorities. The introduction of federal politics into municipal affairs is due partly to this, partly to the patronage placed in the hands of the councillors by the road grants, and partly to the tendency of co-workers in the federal and provincial contests to assist each other in municipal contests.

In Nova Scotia the three electoral revisers are appointed like other municipal officials. They are usually selected from the councillors for the districts concerned. The revisal section in rural municipalities consists of not less than two or more than five polling districts, as the council may determine, each polling district being usually represented by one councillor. Each town constitutes a single revisal section. The city of Halifax has a registrar of voters, who is appointed by the council, but cannot be removed except for cause.

In New Brunswick the revisal section is the parish. In 1854 the law directed that the revisers be appointed or elected like other parish officers. In 1877 the county councillors of each parish were to be the revisers. If they were but two in number, the council selected another; if more than three, the council selected three. In cities and towns the councils elected the revisers. In 1899 the provincial Government secured the right to appoint the chairman, the other two being councillors.

Sale of Intoxicating Liquors.—The sale of intoxicating liquors is prohibited or regulated by municipal ratepayers in accordance with either the Canada Temperance Act, usually called the "Scott Act," or a provincial prohibitory law (in Prince Edward Island) or a provincial license law. Compared with the federal Act the provincial prohibitory Act of Prince Edward Island is more stringent. It forbids the sale except for specified purpose and then through a regularly appointed agent. It gives greater powers with regard to searching, and it provides that any one arrested for drunkenness may be required under oath to state where he received the liquor. In Nova Scotia six counties and Halifax have adopted the provincial license law, the remainder the Dominion prohibitory law. In New Brunswick the provincial license law is in force in the

five northern or French counties and in the city of St. John, and the Dominion prohibitory law in the remainder.

The enforcement of the law, license or prohibitory, is placed in the hands of an inspector or inspectors appointed in Nova Scotia by the municipality. The appointment of an inspector or inspectors must be confirmed or vetoed by the Governor-in-Council. In New Brunswick the license inspector is appointed by the Governor-in-Council, the "Scott Act" inspector by the municipal council. In Prince Edward Island the police in towns are also inspectors under the law. Their vigilance varies, however, with the complexion of the council as reflected in the commission or committee controlling them.

The number of licenses granted is restricted in the following ways. In New Brunswick a distinction is drawn between counties or rural municipalities, incorporated towns and cities. In counties one license is permitted for each full 400 of the first 1,200 population and one for each 1,000 thereafter; in towns one license is permitted for each full 250 of the first 1,000, and one for each 500 thereafter; in the city of St. John the number is limited to 75 shop or tavern licenses and 7 hotel licenses. Since 1877 any parish in a county or any ward in a city has the right of vetoing the granting of licenses within its bounds by recording a majority vote of its ratepayers against it. In Nova Scotia the number is not limited by law, except in Halifax, but the town or the polling district in the county or in the city of Halifax must first express its willingness for the granting of a license by a petition signed by a certain proportion of the ratepayers. In the county or the incorporated town the proportion is two-thirds in favour. In Halifax three-fifths of the ratepayers of polling districts are required for a retail license, a majority for a wholesale. The licenses are granted in Nova Scotia by the council, town or county; in New Brunswick by three commissioners appointed by the Governor-in-Council. Each commissioner holds office for three years, one retiring each year. In each province stringent conditions must be complied with before a license can be granted, and in New Brunswick a commissioner may be subject to a heavy fine for the illegal granting of a license.

The license fees and fines in Nova Scotia go into the munici-

pal treasury. In New Brunswick the spoil is divided with the provincial treasury.[1]

Assessment.—General Acts govern the assessment in counties and towns in each of the three provinces and special Acts the assessment in cities. The provincial Act of Nova Scotia declares all real and personal property and income (subject to certain exemptions) liable for taxation. The assessment law of Halifax omits income. A fixed poll tax of 60 cents in the country, $2.00 in towns or $5.00 in Halifax is also exacted. Exemptions are numerous and important. Among others may be mentioned the property of widows to the value of $400, implements or tools of farmers, mechanics or fishermen to the value of $200, the produce of the farm and of the sea; income up to $400 in the country and $600 in the towns. Ships are rated at half value. Funds in provincial debentures, the income from provincial or municipal debentures, the property of railways, and other property by special Act, are exempt.

The New Brunswick provincial Act requires one-sixth of the tax to be raised by a poll tax and the remainder to be levied equally on real and personal property and income. Fredericton until 1907 enjoyed the distinction of retaining a provision whereby income is rated at full value and real and personal property at one-fifth. The exemptions granted are similar to those of Nova Scotia. Corporations are assessed on their paid-up capital less their real estate.

In Prince Edward Island the confusion of provincial and local obligations has produced a distinct type of assessment. The absence of mines, forests and important industries leaves that pastoral island without the great sources of revenue of the

[1] Some of the differences between the license laws of New Brunswick and Nova Scotia may be traced back to their early history. The provincial license control in New Brunswick runs back to the first charter of St. John when the mayor, and the mayor only (a nominee of the Government), could grant a license. The restriction of this power to the nominee of the provincial Government continued down to 1833. At the same time the number was limited to 35. In Nova Scotia from the first, fees were by law expended on roads and bridges, with the exception that in Halifax not more than two-fifths might be expended on the police. In both provinces the justices of the peace in general (not special) sessions granted the licenses in early days. In 1873, possibly earlier, the Nova Scotia law required a recommendation from two-thirds of the ratepayers of the polling district, and the concurrence of two-thirds of the grand jury before the justices could, if they so decided, issue a license. New Brunswick in 1877 transferred the veto power to the ratepayers, and in 1896 placed the licensing in charge of a board of commissioners.

sister provinces. The heavy burden of the schools is principally borne by the provincial treasury and not by the district assessment. The principal sources of revenue are the Dominion subsidy, the land, income and road taxes, license fees and succession duties.

The land tax was introduced in 1894. At first it was levied at from one to six cents per acre according to value, but in 1897 this was changed to a percentage tax of one-fifth of one per cent., or twenty cents on every $100. The value of the land includes the value of buildings, but after the first year improvements are not assessed. A rate of one and a half per cent. is levied upon income, but income due to manual labour, not exceeding $300, is exempt. The road tax is simple. A poll tax of $1.00 is levied on men between 21 and 60, and twenty-five cents for each horse over three years of age.

In the cities and towns generally there is much dissatisfaction over the system of taxation. Fredericton vigorously protested against the heavy burden placed upon income. St. John and Halifax complain of the hardships suffered by merchants and manufacturers who carry large stocks of goods. Partial relief was given in Halifax by placing merchandise at three-fourths value and by exempting by special legislation certain industries. Wharf property and shipping were granted similar relief. In St. John the heavy burdens which that ambitious city has incurred in its efforts to equip the harbour with ample docks and facilities for a large traffic have aggravated the unequal pressure of its system; and an assessment commission has just reported in favour of a change to a tax on rentals very much as in Ontario. Another commission is sitting in Fredericton. Halifax has had its full share of committees and commissions, yet more are demanded. Fredericton's preposterous income tax was neutralizing the great advantage of central position and natural beauty and was driving many away. And in both St. John and Halifax municipal taxation is unduly checking manufacturing and trading enterprise.[1]

[1] A glance at the development of assessment laws is instructive. In New Brunswick, in 1786 the assessors were directed to levy "by equal proportion" the amounts authorized for the courthouse, etc. They apportioned the taxes as "they in their discretion" thought "just and reasonable." For two or three years the "inhabitant" could pay his taxes in labour at two shillings and sixpence a day. The "discretion"

Roads

The road problem is not yet solved. In Nova Scotia railway mileage per head of population and per acre of the province is

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of the assessors "without regulation or appeal produced great dissimilarity in the mode of apportioning the rates throughout the province." Accordingly in 1822 an Act was passed directing that one-half of the sum assessed be levied by a poll tax and the other in "just and equal proportion" upon the inhabitants and upon the real estate of the non-residents according to the discretion of the assessors. In 1831 only one-eighth was to be levied by a poll tax; the remainder on the "visible" property and income. In 1850, income not derived from real and personal property was to be rated five times as heavily as real and personal property. This provision was adopted by St. John in 1869 and by Fredericton in 1871. It was abandoned by the province in 1875, by St. John in 1882, but it remained in Fredericton until 1907. In 1875 a heavy burden was placed on polls—one sixth of the whole. The land tax in Prince Edward Island is the survivor of the quit rents. In 1848 an Act was passed which requested Her Majesty to relinquish the quit rents and permit the province to substitute a land tax for the encouragement of education on the condition that the quit rents were relinquished. This was done. The most notable feature in the land tax was the discrimination in favour of cultivated land. The tax on wilderness land was five shillings for every one hundred acres; on cultivated land two shillings and sixpence. The earliest reference to assessment in Nova Scotia occurs in the Act of 1763 relating to the poor. The amount required for the support of the poor of the township was to be levied "in just and equal proportion, according to each person's known estate, either real or personal." The poor rate was kept separate until about 1856. In this year the demand for a "more equal and just system" led to a better definition of personalty, a system of exemptions, and a poll tax. Of the total assessment one-eighth was to be raised by poll tax; in 1859 the ratio was one-fourth; in 1864 the poll tax could not exceed 30 cents for poor rate or 30 cents for the other purposes. To-day it is 60 cents for counties and $2 for towns. From 1873 to 1900 the local authorities were permitted to abolish the poll tax. The definition of personal property in the Act of 1856 included personal chattels, stock-in-trade, moneys and ships (to one-half value). In 1888, the year of the Towns Incorporation Act, income became assessable, and banks and insurance companies were rated at $100 for every $20 net income or profits, provided that the tax were at least $150. The exemptions of 1856 included public property, property used for religious, educational and charitable purposes, provincial debentures, properties of widows of less than £100. To these were added the produce of the farm (1884), of fishing (1900), $400 of income in counties and $600 in towns (1888). The city of Halifax has had a most varied experience with the personal property tax. It is mentioned in 1841, but two years later it disappears and the assessors were directed to assess in "the most just and equal manner they can devise" by an equal £1 rate on real estate, regard being had to the rental value, and further, "according to the ability or capacity of every respective inhabitant to pay and contribute." Banks, insurance and joint stock companies were assessed according to profits, declared in 1844 *not* to be regarded as income, and in 1846 as net income or profits. Personalty reappears in 1849 and is defined as furniture, moneys, merchandise, ships, debts (including mortgages), securities and stocks. Everything is included. Joint stock companies are assessed according to net profits or income. In 1864 the tax on companies was changed, life insurance companies being assessed upon premiums, less expenses and debt claims paid; benefit building societies on deposits, like mortgages; joint stocks, £100 for each £6 of income. The tax on mortgages was abolished in 1866. In 1880 the bank tax was changed to ⅜ per cent. of the paid-up capital, less the value of the real estate, which was assessed in the usual way in addition. In 1906 the special tax on banks was changed to a fee of $1,000 and $\frac{1}{16}$ of 1 per cent., based upon the volume of business. Money on deposit receipt was exempted from taxation in 1883. The principle of a special fee in addition to the usual tax on real estate was adopted in 1883 for insurance companies. This was extended to telegraph, telephone, cable companies and agencies. The early provision limited the special fee to 1 per cent. of the capital. A few years before, in 1876, fire insurance

high; but there are no navigable rivers of any length to keep down the rates by competition. Some compensation is found, as also in Prince Edward Island, in the deep indentations of the coast line, which bring the most remote spot in Nova Scotia within sixty miles of the sea, and in Prince Edward Island bring almost every locality within sound of the roar of the waves. New Brunswick has a fairly unbroken coast line, but is blessed with three magnificent rivers, besides a number of smaller streams navigable for some distance.

In 1904 New Brunswick exchanged the wasteful system of statute labour for the less popular road tax. The tax is lower than the statute labour at the old value of 50 cents for a day's work; but it is a money tax and many of the poorer people find it easier to give three days' work to the roads than $1.00. The tax is collected like other parish rates. The county treasurer credits each parish and each division with its returns, and places these at the disposal of the provincial commissioner of works. Local interests are protected by the provision requiring the money collected within a parish to be expended within that parish. The control of the expenditure by the provincial authorities is here an important innovation. In a sense the Highways Act of 1904 was foreshadowed as early as 1816, when the Assembly laid out certain Great Roads and made their up-keep principally a provincial charge. The Governor-in-Council appointed supervisors with powers similar to those of the superintendents of 1904. The funds, however, were derived principally from provincial grants.

In addition to these main arteries of traffic there were By-Roads supported largely by statute labour. These were under the control of the local authorities, the sessions at first, later the councils. From 1796 to 1835 the statute labour was practically a

companies were assessed at $1.15 for each $100 of income. In 1906 stock brokers were assessed at 1½ per cent. of the value of the real estate occupied by them. In 1891 the general company tax was based on realty and personalty, but it must reach a minimum of $100. The burden of taxation upon merchandise was lessened by assessing at three-fourths value in 1895. Ships were assessed at one-fourth value in the same year. Exemptions to new manufacturing industries for ten years were provided for in 1906. From 1849 to 1883 the real estate tax was levied on the occupant, and the value of the estate was based on rental, being ten times a fair rental. When the lien law was passed in 1883 the owners became liable. The poll tax was nominally $2, but practically uncollected until it was repealed shortly before 1891. In 1906 it was again required by law.

poll-tax, rich and poor contributing alike. Statute labour was compulsory in the city of St. John until 1835 and in Fredericton until 1850. The first suspicion of a tax appears in the assessment of one per cent. per acre of wilderness lands. This was in the Act of 1861. Later the tax was reduced. In 1896 county councils were given authority to substitute a road tax for statute labour, but no action was taken.

There are three Acts relating to roads in force in Nova Scotia. The Highway Act is the oldest. It places the expenditure of the provincial grants and the enforcement of the statute labour in the hands of the county councils. The councils in turn leave these matters to the councillors interested. The councillor recommends a supervisor for the district and he expends the money as directed by the council. The Road Act of 1899, now in force in four or five municipalities, differs from the Highway Act in combining from two to six polling districts into one road district, in placing it in charge of a road board composed of the councillors concerned. It, however, leaves untouched the most serious defect of the entire system—provision for skilled instruction and oversight. The centralized system will permit the carrying out under permanent officials of plans embracing large sections of country. For obvious reasons, however, it would seem advisable to unite local supervision and central direction. Though unpopular, the road tax is an improvement on statute labour and with a few changes might overcome a number of the objections now raised. The Halifax Road Act of 1898 is also a distinct step forward. It commutes the statute labour into a road tax, but unlike the New Brunswick Act permits any ratepayer to pay his tax in labour on the roads at one dollar a day. One supervisor is appointed by the councillor for each electoral district. Roadmasters are appointed for the road sections. Supervisors have discretionary powers in expending the government or county road grant apportioned to their districts. They are paid by the council and their accounts must be countersigned by the councillor of the district. In case of a dispute the warden and a committee shall investigate and have full power to pass finally upon the matter. The council may appoint one or more competent inspectors of roads for the whole county.

Schools

The support of education ranks second to no interest either in importance or cost. About one-third of the provincial revenues of each province is thus spent. This represents in Nova Scotia and New Brunswick less than a third of the cost of public schools, the balance being met by the locality (section, district or town). The province controls the training and licensing of the teacher and contributes to his salary.

In 1904 the percentages of the contributions were as follows:[1]

	By Province.	By District.
Nova Scotia	27.30	72.70
New Brunswick	29.09	70.91
Prince Edward Island	72.11	27.89
Manitoba	9.89	90.13
British Columbia	75.83	24.17

The supplement paid by the district in Prince Edward Island appears to have been originally an equivalent for the board of the teacher. Its inauguration marks the disappearance of the old practice of "boarding around."

In Nova Scotia and New Brunswick there is a third source of support—the municipal or county fund. The rich sections are required to assist the weak, as the rich man pays for the schooling of the poor man's children. This fund is distributed among the schools in such a way as to encourage open schools and regular attendance. Each ratepayer in the county contributes, but only those districts with open schools receive, and the amounts are proportioned to average attendance. The education of the blind and deaf is borne, one-half by the county school fund, one-half by the province.

The similarity between the systems of Nova Scotia and New Brunswick is due to Theodore H. Rand, afterwards head of McMaster University, who was intrusted by Sir Charles Tupper with the organization of the public school system in Nova Scotia in 1864, and who was afterwards called to New Brunswick in 1871 to perform a similar service.

The first public Act on behalf of education in the province of

[1] Statistical Year Book of Canada, 1904.

New Brunswick was passed in 1800, when the College of New Brunswick (a secondary school in disguise) was established and granted support. Five years later (1805) the Legislature made similar provisions (under another name) for St. John; and established the first parish schools—two being provided for each county and placed under the management of the justices of the sessions. Royal instructions to the first Governor directed that no one be employed as teacher unless he held a license from the Bishop of London or the Governor of the province. The year 1816 witnessed an enlargement of the plan of 1805 with a very important addition. Aid was to be granted to parish schools conditionally upon the inhabitants subscribing a proportionate amount. Further, authority was given to assess, should the inhabitants so decide; and trustees for the parish were to be appointed. The germ of the school district appears in the exemption from compulsory assessment granted to any one living more than three miles from the school. In 1829 the College was reorganized and further provision made for grammar schools; but higher education languished. The parish schools, however, multiplied and increased in usefulness. In 1833 the trustees were directed to divide the parishes into school districts; increased grants were made and hampering restrictions withdrawn; and two female schools (i.e., schools taught by women) were authorized for each parish. The tasks of examining and licensing teachers and of inspecting and supervising the schools became too great for the Governor-in-Council. In 1837 these matters were entrusted to boards of education appointed for each county. Ten years later these boards were superseded by a provincial board which was specially enjoined to make provision for the training of teachers and to select text-books. In 1852 a Superintendent of Education for the province was appointed.

The provincial allowances were at first unconditional grants, then (1816) conditional upon the locality's subscription. This was repeated in 1823, and in 1833 the grants were limited to the number of schools in the parish. In 1847 the allowance was granted according to the grade of license of the teacher, and in 1852 according to the sex of the teacher. A bonus of 25 per cent. (1852) or 10 per cent. (1858) was granted to districts

adopting the assessment in place of the subscription principle. The next radical move was made in 1871 when compulsory assessment was introduced and the schools became free throughout the province. About 1879 an attempt was made to secure greater efficiency by conditioning the provincial grants upon the inspector's reports. This system of payment by results proved so unpopular that it led to the resignation of the Superintendent and its abolition. Another experiment is now being made. Its object is to meet the evils, arising from the depopulation of the rural districts, by a system of consolidation which was initiated through the liberality of Sir William Macdonald, of Montreal.

The district school tax is levied by the district according to the county valuation and is collected by the district. The provincial grant varies with the grade of license and the character of the school. A teacher in a poor district receives a larger allowance, as does the teacher of a secondary school (called Academy in Nova Scotia and Grammar School in New Brunswick). The same is true of the teacher in a superior school in New Brunswick, or High School in Nova Scotia. The superior school is a hybrid—half common and half grammar school—or, better, a first-class common school with a tincture of Latin. It is intended to serve the parish in a manner not unlike that in which the Grammar School serves the county. Special grants are also made to manual training and domestic science schools. The New Brunswick system is spared the district school commissioners of Nova Scotia whose present powers are now exercised chiefly in subdividing already minute school sections to satisfy quarrelsome local factions.

The Poor

The care of the poor has from the first been an important duty of the township or parish. The earliest legislative and administrative acts in the provinces kept the poor in view. In Nova Scotia the township (or "settlement") meeting appointed officers and authorized assessment and for a time disposed of the poor for the coming year. The first Legislature of New Brunswick in 1786 remembered the poor. Except in a few

instances the burden has been purely local.[1] The care of the poor was a religious as well as a civic duty; and this is recognized to this day in Prince Edward Island, where, for example, in Charlottetown and probably elsewhere, a certain portion of the poor grant is given to the different churches to be expended by them.

In earlier times poor relief was given sometimes to parents for looking after a lunatic or crippled child or relative (e.g., in Prince Edward Island in 1819), or to some person in the community who agreed to look after the unfortunate, subject, of course, to the approval of the overseers. Poor children were apprenticed—a practice open to great abuses. The auction or tender system was gradually supplanted by the almshouse; but it is still found in the parsimonious parishes and districts of New Brunswick. It has been forbidden by statute in Nova Scotia since 1900. St. John built the first almshouse in New Brunswick prior to 1810, and the Governor and Council built one in Halifax shortly after that city was founded. In New Brunswick, St. Andrew's followed St. John in 1824, Woodstock in 1860, and Northumberland in 1867; while in 1897 a general Act gave a parish or group of parishes power to erect almshouses. These almshouses are primarily parochial, not county institutions. A number of parishes usually combine, but they and not the county are responsible.[2] This has led in New Brunswick to great variety in the appointment of the commissioners of the almshouses. In some places they are appointed by the Governor-in-Council, in others they are elected; in others appointed by the sessions or council (city or county); in others two or more methods are combined. The commissioners report to the municipality.

The poor insane were once a provincial but are now a local charge in Nova Scotia and New Brunswick. Each parish or

[1] In New Brunswick for example the province made grants to St. John and St. Andrew's for needy immigrants one or two seasons after heavy immigrations. Grants of seed potatoes were also made in 1817 and perhaps 1846. After the great fire of 1839 £20,000 was lent to St. John sufferers. In 1790 the province of Nova Scotia gave £1,500 to Halifax for support of transient poor and an impost was levied in 1800 for support of the poor.

[2] As early as 1799 the regulations adopted for the poor house in Halifax were authorized for similar houses where erected in other counties.

township must bear its own burden of the poor. Charity begins and ends at home. There is not a little ungenerous rivalry in aiding the poor to go to other localities; but the law of settlement is strict and well defined. A year's residence is now required in New Brunswick, and in Nova Scotia it has been obligatory since 1770. Since 1837 the French of Dorchester, Shediac and Moncton have cared for their own poor; and in 1901 they received authority to erect an almshouse.

In Prince Edward Island the poor relief is distributed by the members of the Legislature either directly or through nominees. The amounts are individually small and the number requiring aid is not large.

Within recent years local hospitals have been erected in a number of towns, supported in part by fees and gifts, in part by local assessments and provincial grants.

On account of the absence of provincial tabulations, and of the inadequacy of local reports, it is not possible to give a statistical review of local finance.

LOCAL GOVERNMENT IN NEWFOUNDLAND

BY

D. W. PROWSE, LL.D.

LOCAL GOVERNMENT IN NEWFOUNDLAND

The story of Newfoundland's local government is so extraordinary and makes such a grotesque chapter in colonial history that any reader might be pardoned for treating it almost as romance, an ingenious invention of some writer of fiction. Newfoundland is not only the most ancient British colony, but, putting aside Raleigh's unfortunate colonization schemes in Virginia, was for over one hundred years England's sole possession in the New World. The generally accepted view that its discovery is to be credited to Sebastian Cabot (1497), and that the first attempt at colonization was begun by Sir Humphrey Gilbert in August, 1583, has been shown to be wrong.[1] It was John Cabot to whom the honour of discovery fell. Sebastian his son never set foot in North America. Moreover, when Sir Humphrey Gilbert came to St. John's, the sole survivor of the expedition, Hayes, describes it as "a place very populous and much frequented." Every part of the east coast was familiar to English fishermen and when Gilbert hove-to to get supplies for his impoverished crews, fishermen from the west of England who were then in control would not allow him to land until he had shown his commission from Queen Elizabeth.

The local government of that day and for many years later is known as the rule of the "fishing admiral," one of the most grotesque forms of government ever devised. The first English skipper to enter the harbour became for the fishing season admiral and supreme judge. This was in accord with the custom not only among the English but among all the foreign fishermen as well who then frequented the island. The democratic English, however, made the admiral change about each week so that each master in turn became ruler. The new admiral signalized each Sunday his entry into authority by a grand spree for all his fellow skippers. The most curious part of the proceeding is that both the French and English Governments by special enactments legalized this fantastic rule. By an ordinance of Louis XIV, prepared by his great minister, Colbert, the following rules were enacted for the French Newfoundland fishery:

[1] See Prowse, *History of Newfoundland.*

(1) The first who shall arrive at or send his boat to the harbour called the Havre du Petit Maître (on the extreme north-east coast of the island) shall have the choice and take the space of ground necessary for his fishing. He shall then put up, at the place called "The Scaffold of the Grapple," a bill signed by him stating the day of his arrival and the harbour which he has chosen.

(2) All other masters on their arrival shall go or send to the same place and write down on the same bill the day of their arrival, the number of their men and the name of the harbour and the place which they have chosen, in proportion to the burthen of their ships and the number of their mariners.

(3) The captain that arrives first shall cause the bill or placard to be guarded by one of his men, who shall remain upon the place till all the masters shall have made their declaration, which afterwards shall be put into his hands.

(4) No masters or mariners may settle in any harbour or station till they have made their declaration in the form aforesaid, nor shall they disturb any other master in his choice that he may have made under the penalty of 500 livres.

The first French master who arrived in the harbour was, like his English prototype, supreme ruler and judge over all. On his return he was to furnish a full report of his proceedings to the judge of the Admiralty Court. One curious provision in these rules is characteristic of the age—"All French subjects of what quality or condition soever might cause ships to be built or bought, and carry on a trade at sea by themselves, or agents, without its being considered derogatory to their quality, provided they sold nothing by retail."

Practically the same rules giving authority to the English fishing admirals to put the various orders in execution were maintained by the Star Chamber rules of Charles I and Charles II. This authority was also continued by the Act, 10 and 11 William III, Cap. xxv. The title is still surviving in the Admiral of the British Herring Fleet in the North Sea and in the *Prud'homme* or ruler over French fishermen on the west coast of Newfoundland.

These fishing admirals were at this time merely the servants

of the merchants; and it need hardly be said that their rule was a travesty of justice. Their régime was interrupted for a short period by the piratical adventurer, David Kirk, the conqueror of Quebec. In reality Kirk was only the head of a trading company, but he constituted himself supreme governor and ruled over all with a rod of iron. He set up public-houses and no one was allowed to purchase liquor except from the gubernatorial tap. He was removed, not so much for robbing the fishermen as for plundering his associates in the company.

In 1640 John Downing was sent out as Governor, but he filled the office only a short time. The first real Governor was a resident of Maine, John Treworgie, appointed by Cromwell. During his tenure of office there was a regular and honest government and the rule of the fishing admiral was for the time superseded. He was such an excellent public servant that, although a Puritan, he was retained in office for some time under Charles II. It is lamentable to relate that he had to petition both Cromwell and Charles for his "sallary," which was never paid.

About the reign of Queen Anne the rule of the fishing admiral was tempered by the authority of the naval officers. They gave the settlers quarter-deck law. Rodney's instructions to his subordinate officers are unique. "In case any other complaints shall appear before you of crime and misdemeanors upon the land you have final power and authority to adjudge and determine the same, according to the custom of the country and the best of your judgment."

Some of these naval rulers were far in advance of their age. They had gatherings of the inhabitants modelled on the New England town meeting. These local parliaments on the voluntary submission of the general inhabitants were a mixture of legislative, judicial, and executive functions all blended together. They first appear under Captain Crowe, R.N., as Governor (1711), and were continued by Sir Nicholas Trevanion (1712). Their success is in large measure attributable to the fact that it was a time of war, when a sense of common danger from their dreaded enemy, the French, drew the English inhabitants closer together. A short extract from the records will show us best the character of this unique system of municipal government.

"By Sir Nicholas Trevanion, Knight, Commander of H.M. Ships and Garrison, Governor in Chief at Newfoundland. Dec. 10th, 1712.

A record of several courts held at St. Johns for better discipline, good order of people, etc., debated at Courts held. Present Admiral and Vice Admiral [the fishing Admirals]. Merchants and chief inhabitants and witnesses being examined, it was brought to the following conclusion,

(1) That order be put up at Public Houses and other places for suppressing drunkenness.

(2) Confirmed last year by Captain Crowe that Mr. Jacob Rice, Anglican Minister of St. Johns, should have as follows:

From Shallops.....	Three quintals	dry fish.
From two-men Boats.....	Two "	"
From Skiffs.....	One quintal	"

and planters being very backward in paying he got only one hundred quintals of fish this season.

(3) Confirm John Collyns, Esq., Governor of Fort William and it is appointed that during cessation [absence of Governor during the winter] twenty men lie in the Fort every night.

Other matters between masters of ships and planters and boat keepers relate to debts not mentioned, parties being satisfied."

The whole of these proceedings, very ingeniously contrived and very satisfactory in the primitive condition of the colony, were, of course, wholly illegal, and when war ceased they, too, came to an end.

In 1729 an attempt at real government was begun by the appointment of Lord Vere Beauclerc, with whom was to be associated a lawyer. The island was to be divided into six districts with courts of quarter session. But as Lord Vere wished to hold his seat in Parliament, a very inferior substitute was sent out (Osborne), together with eleven copies of "Shaw's Practical Justice of the Peace," a dull pedantic work very forbidding to a layman.

It must be borne in mind that all through this eighteenth century there was no resident governor. The naval officer who acted as supreme ruler arrived some time during the summer, stayed a

week or two, and then went off to the West Indies or England. A civilian merchant, like John Collyns, Esq., was appointed governor for the winter. The courts, such as they were, had also no regular professional judges and no salaries. An American Loyalist, Dr. Gardner, gives the following account of the St. John's court. The capital then contained probably about 5,000 regular inhabitants and 5,000 more of transient fishermen; 108 public-houses were licensed by the magistrates solely for the fees. "An inoffensive tailor," writes Gardner, "had for several days in the summer of 1783 been intoxicated and was by that means rendered insane. In this situation he affronted his neighbour, a widow woman, with improper language, accusing everyone of robbing him. The woman summoned him, but he did not appear, still too drunk, and in default for contempt of court was fined £150 sterling and his property attached. As he was very wealthy it was of course paid and the three justices divided the money." Popular opposition to these courts resulted in the establishment of a regular supreme court in 1791. The first chief justice was a trained lawyer and proved to be an excellent choice.

The colonial policy of the British Government towards Newfoundland was clear. No encouragement was given to colonization and no regular governor or courts of justice were provided for. A fishing station for Devonshire fishermen—such was the island in the eyes of the mother land. Captain Cook, the navigator, who mapped the colony, seems to have entertained a different estimate. He described the country as rich in minerals and timber, with beautiful rivers and lakes and plenty of good land for cultivation.

The advent of constitutional local government was largely brought about by an act of judicial barbarism in 1819, when two fishermen were flogged for not promptly answering a court summons. The rough and ready constitution of the island was seminautical in character; the admiral was governor and the "surrogate" officials of the Admiralty court were justices. It was in great measure the indignation over the flogging incident that kept alive the agitation for reform. In 1824 Supreme Circuit and Quarter Sessions were duly constituted, and eight years later (1832) a constitution was finally granted to the colony. Land

grants were first made in 1813; but the first public road was not opened until 1832.

Under the new constitution a great impetus was given to road-making and public improvements of all kinds. Local road boards with a variety of duties were appointed by the Governor-in-council. Quarter sessions also had extensive duties of local supervision. They were abolished in 1901, their labours of supervision being taken charge of by stipendiary magistrates. By an Act of 1897 the appointed road boards may be transformed into popularly elected "Divisional Boards." A petition to the Governor-in-council asking for such a charge is first subjected to a report from the nearest stipendiary magistrate. A divisional board holds office for two years. No ballots are used at its election, entries of votes being made in a book. The Governor-in-council also appoints boards of health or instructs a stipendiary magistrate to act. Outside of St. John's all assessment and taxation is done by the Legislature, whose jurisdiction also includes Labrador. Liquor licenses are of two kinds, wholesale and retail, and are granted by the stipendiary magistrates, who in the case of retail shops fix the fee as well. A wholesale license costs $100; the retail fee varies from $10 to $70. But provision is made for local option by a bare majority of votes in any district.

Educational matters according to the last general educational Act of 1903 are entrusted to boards of education appointed by the Governor-in-council for each leading denomination, to which provincial grants are made. Thus there is a Church of England, a Roman Catholic, a Presbyterian, a Congregationalist, a Methodist, and a Salvation Army board of education. Fees are charged of from $1 to $4 per year for instruction at board schools. One member of each school board retires annually in order of seniority of appointment.

The town of St. John's, the capital of the island, with a present population of 30,000,[1] is the only fully organized municipality. In 1888 by Act of Parliament the inhabitants were allowed to elect a mayor and five councillors who were to act with two appointed councillors for three-year terms. At present,

[1] The total population of Newfoundland in 1901 was 202,984.

as provided by the Act of 1902 which is still in force, the council consists of a mayor and six councillors all elected by popular vote for a period of four years. The mayor is paid a salary of $600 and $900 is paid to the councillors according to attendance. The franchise is generous, all residents of one year who have paid their assessments being entitled to vote. Each candidate for the council at nomination deposits $50 with the returning officer. If he receives one-half of the votes polled by any successful candidate one-half of his deposit is returned to him. In this way election expenses are defrayed and a check is placed on chance nominations. Another interesting provision that is worthy of being copied is the clause permitting every corporation to vote at elections. The vote is cast by an officer appointed for the purpose in writing. The council has full control of the highways, which does not seem to be the case in Canada.

The town water supply, now very ample, is in charge of the council and is obtained from Windsor Lake about six miles from St. John's. Water charges are fixed on rental values of property, a lower charge being made on non-users than on users. Any person found guilty of wrongfully wasting water is subject to a fine of not more than $20. The gas and electric light plants are owned and operated by private companies. For gas a charge of $2 per thousand is made, a reduction of 50 per cent. being allowed for cooking and heating.

Over one-half of the municipal revenue is derived from taxes, water and sewage rates on rentals, and fees. No tax reduction is made for mortgages. Government buildings are exempt but it is provided that the Government will pay such reasonable sums for protection and for water as the council may determine. The net revenue from the water department is relatively large, amounting in 1905 to $23,817.36, that is, one-seventh of the revenue of the town. The Government also pays the town all duties on coal imported into the municipality, rents from Crown property in St. John's, a definite sum of $8,000 for lighting and sanitation, and special appropriations for roads, streets and bridges. In 1905 the customs coal duties paid made up $52,-368.51, or one-third of the revenue. On the other hand the town pays the Government the sum of $12,000 towards the expenses

of maintaining a fire department. Among the sundry licenses is one of $500 on brokers doing business as stock brokers on margins. The council is not permitted to incur liabilities beyond the actual revenue without special consent of Parliament, and must render a full report of its municipal work each year to the Governor-in-council. The debt of the town is large, amounting on the 31st of December, 1905, to $1,195,721.77; the interest charges on it being $46,835.99 out of a total municipal expenditure of $160,416.45.

SOME NOTES ON THE CHARTERS OF MONTREAL AND RELATED STATUTES

BY

THE HON. R. STANLEY WEIR, D.C.L.,

CITY RECORDER, MONTREAL

SOME NOTES ON THE CHARTERS OF MONTREAL AND RELATED STATUTES

Territorial Limits of the City

"And be it enacted, That the tract of land which, in and by a certain Proclamation of His Excellency Alured Clarke, Esquire, Lieutenant-Governor of the heretofore Province of Lower Canada, issued under the Great Seal of the said last mentioned Province, and bearing date the seventh day of May, in the year of our Lord one thousand seven hundred and ninety-two, was and is described as being comprehended within the City and Town of Montreal, and which it was therein declared should be thenceforward called by that name, shall, as provided by the said Ordinance herein first mentioned[1] constitute and be, and be called, the City of Montreal." Such is the clause indicating the limits of Montreal, to be met with in the early legislative charters of the city.[2] The Lieutenant-Governor mentioned was merely a *locum tenens,* the Governor, Lord Dorchester, being in England, in connection with the passage of the Constitutional Act. The proclamation referred to was made by Major Clarke as Lieutenant-Governor and divided the province, in virtue of that Act, into counties, cities and towns. As it is not easy of general access,[3] that portion defining the limits of the city and town of Montreal may be quoted here:

"The city and town of Montreal shall include the whole of that stretch or portion of ground (forming part and parcel of the aforesaid county of Montreal) bounded in the front by the river St. Lawrence and in rear by a line parallel to the general course of the fortification walls in rear of the said city to a distance of 100 chains from the gate commonly called the St. Lawrence Gate, and bounded on the east or lower side by a line running parallel to the general course of the fortification walls on

[1] 4 Vic. cap. 36, s. 2, i.e. Charter of 1840.

[2] Ibid., the date erroneously given as 1791, 14 & 15 Vic. cap. 128, s. 3, 37 Vic. cap. 51, s. 2.

[3] *Rapport du Comité Choisi sur le Gouvernement Civil du Canada.* Quebec, 1829. Neilson & Cowan.

the east or lower side of the said city to the distance of 100 chains from the gates of the Quebec suburbs commonly known as the Quebec Gate, and on the west or upper side by a line running parallel to the general course of the fortification walls on the west or upper side of the city to a distance of 100 chains from the gate of the St. Antoine suburbs commonly called the Recollets' Gate; and that the city and town of Montreal be and by these presents is declared to be divided into two parts which shall be respectively named East and West, and that the East end shall include all the eastern or lower part of the stretch of land above designated bounded on the west or upper side by a line running through the middle of the main street of St. Lawrence suburbs and its continuation, and through the middle of the street called Conjugation Street and Notre Dame Street, and through the middle of the latter westward to the middle of St. Joseph Street, descending thence through the middle of St. Joseph Street to the river; and that the West end shall include the remainder of the said stretch or portion of ground within the limits hereinabove designated." The delimitation of territory in the proclamation of the 7th of May, 1792, continued to form the legal circumference of the city until 1889, when by the charter granted in that year it was declared that the city should comprise the tract of land indicated in the plan certified by the City Surveyor in duplicate under date 3rd January, 1889, one copy being deposited in the office of the Clerk of the Legislative Council and the other with the City Surveyor.[1]

Doubts having arisen as to the sufficiency of this description, a more detailed description following the boundaries of the city with great circumspection was sanctioned in the consolidating statute of 1899. St. Helen's Island, Ile Ronde, and Ile Verte were also included within the limits of the city,[2] and for municipal and police purposes its jurisdiction extends southward to the centre of the river St. Lawrence. Since 1899, however, the boundaries of the city have been still further extended by the inclusion of contiguous municipalities, comprising chiefly the cities of St. Henry and St. Cunegonde;[3] while a Greater Mont-

[1] 52 Vic. cap. 79, s. 5.
[2] 62 Vic. cap. 58, s. 5-6.
[3] *Infra* p. 288.

real, to embrace the whole island with its area of over 300 square miles and numerous municipalities, is the dream of not a few.[1]

Early and Later Charters

The characteristic feature of municipal affairs in the cities of Montreal and Quebec during the régime under the Constitutional Act (1791-1837) was, as pointed out elsewhere, an administration by justices of the peace.[2] No better notion of the scope and manner of their detailed work can be obtained than from a perusal of the minutes of the meetings of the justices of Montreal, still preserved in the archives of the city.

The statutory history of Montreal begins with William IV's sanction (5th June, 1832) of an Act of incorporation passed by the Legislative Council and Assembly of Lower Canada about fourteen months before (31st March, 1813)[3]. The inhabitants of the city were declared to be a body politic and corporate under the style and title of " The Corporation of the City of Montreal." It is a curious illustration of the persistence of words that although this statutory name was not repeated in any subsequent enactment, the word " Corporation," in the sense of the civic powers that be, is used in common parlance in Montreal to this day. The city was divided into eight wards[4] and two " common-council men " were elected from each; the common-council thus composed elected the mayor. Among the interesting provisions of this first charter were those requiring that all by-laws, regulations or ordinances should receive the approval of the Court of King's Bench before becoming effective,[5] and that any person refusing to serve as common-councilman should incur a penalty of £25 to be applied to the uses of the " Corporation."[6] Borrowing powers were restricted to the sum of £10,000, and the com-

[1] Of old Montreal the best collection of maps is that published in 1884 privately by the late H. Beaugrand, Mayor of Montreal. A great many valuable maps are to be found in the City Surveyor's office.

[2] *Municipal Institutions in P.Q.* (University of Toronto Studies, History and Economics, vol. II, p. 50.)

[3] 1 Wm. IV. c. 54.

[4] The names of these wards may interest the "old inhabitant." They were East, West, Sainte Anne, St. Joseph, St. Anthony, St. Lawrence, St. Louis, St. Mary. The boundaries of these wards, as given, also disclose interesting topography.

[5] Sec. 10.

[6] Sec. 17.

mon-council was authorized, somewhat vaguely, to exercise the same powers exclusively as the justices of the peace had formerly exercised.

This charter was declared to be valid for four years only, and at the end of that time, doubtless owing to the disturbed political condition of the province and country, it was not renewed. Commenting upon the absence of municipal government, Lord Durham in his famous report referred to the disgraceful condition of the streets and the utter absence of lighting as seriously affecting the comfort and security of the inhabitants. On May 2nd, 1836, the Court of Special Sessions of the Peace resumed their sittings for the administration of the town and continued them until August, 1840. In that year the city received from the special council that administered the affairs of the province between 1839 and the passage of the Act of Union in 1840 its second charter.[1] The new corporate name was "The Mayor, Aldermen, and Citizens of the City of Montreal." The city (with a population of approximately 40,000) was divided into six wards electing three councillors each, making a total common council of eighteen; but the first mayor and councillors were appointed by the Governor of the province by letters patent. An amending ordinance[2] was passed in the following year clearing up some doubtful points as to elections and levying of taxation.

In 1814 (population about 45,000) as provided in 8 Vic., cap. 59, another arrangement of wards was made. Of nine wards three were styled city, and six suburban wards, the city wards electing three councillors each and the suburban two, the full council thus numbering twenty-one.

The next constitutional change took place in 1851 when, in virtue of 14 and 15 Vic., cap. 128, a consolidation of the various statutes relating to the city was made. The election of the mayor hitherto held by the council was entrusted to the people, a method subsequently adhered to without deviation. The number of wards was increased to nine and the suburban wards, which had been increasing in population, were given the right to elect three councillors each. The full council now numbered 27, the population being 58,000. Council meetings were held every three

[1] 4 Vic. c. 36 (1840).
[2] 4 Vic. c. 32 (1841).

months, although special meetings might be called by the mayor, or failing his consent by a requisition of councillors. This statute enlarged the power of the city council to pass by-laws for various matters pertaining to health, good order, etc., which it described in detail.

Instead of exercising authority in virtue of power to pass by-laws for the "general welfare" and interpreting this authority in the light of jurisprudence and the decisions of the courts, the city preferred, and has ever since persisted in the practice, to ask the Legislature (although, of course, the Legislature in point of form appears to impose its own will) to specify the particular powers that the city may ask. The obvious objection to such a method is the impossibility of foreseeing all the particular local needs and the consequent necessity of almost annual applications to the Legislature, these annual petitions frequently serving as the occasion for conjoint demands for the promotion of private interests often in spite of the city's protests.

The statute of 1851 was also notable for the establishment of a Recorder's court with extensive powers.[1] Since 1899 it consists of two Recorders or judges whose independence is assured by their being nominated by the Lieutenant-Governor-in-council and liable to removal only upon joint address of the two branches of the Legislature. Up to this time the greatest importance seems to have been attached by the citizens of Montreal to their representation in the council and the mode of election of their mayor and councillors. This was perhaps natural during and following upon a period of constitutional agitation. Frequent recourse, too, was had to the Legislature, especially for the raising of money for the necessities of the growing city. The long list of special legislative authorizations shows that the possession of a so called civic charter is no guarantee of local independence. The charter has been revised and consolidated four times; in 1851, 1874, 1889, and 1899.

The statute of 1874 is memorable in that it established the procedure, since followed in all essential particulars, for the costly acquisition of immovable property for the widening of streets and highways—a remarkable and unique feature, it is believed,

[1] See University of Toronto Studies, History and Economics, vol. II., No. 3, p. 60 [342].

in civic administration. It will perhaps be worth while to trace directly the genesis and development of these expropriations which have cost Montreal so dear. The charter of 1874 also authorized the acquisition of the extensive and magnificent hill behind the town for park purposes, covering an area of about 650 acres. to be known as Mount Royal Park.

The revision and consolidation of the charter of 1889[1] was instigated chiefly through the efforts of the Hon. J. J. C. Abbott as mayor of the city. The almost annual amendments made since the consolidation of 1874 required collating and systematizing. The result was an orderly and ample grant of autonomous powers. Had the city been content to keep within these limits, much extravagance and wastefulness might have been avoided. The charter of 1889 was framed as a constitution defining in general terms, with one exception, the powers and duties of the city in respect to the various branches of its organization and service. It comprised twenty-two titles, the names of which will indicate their scope: 1. Interpretative provisions; 2. Incorporation (the city of Montreal); 3. City boundaries—wards—annexation of territory; 4. The city council—mayor and aldermen; 5. Municipal electors—voters' list—revision of lists; 6. Municipal elections; 7. Contested elections; 8. Meetings of council; 9. Officers of the council; 10. Taxation; 11. Collection of taxes and assessments; 12. Sale of immovable property for taxes, etc.; 13. Finances; 14. Consolidation of the debt; 15. By-laws; 16. The Recorder's court; 17. Streets and highways; 18. Expropriation; 19. Special assessments; 20. Special provisions as to the widening of St. Lawrence and Notre Dame streets; 21. Water-works; 22. Miscellaneous provisions (procedure, abbattoirs, etc.).

The one exception to the general and strictly constitutional form and substance of this charter was contained in the twentieth title, which authorized and indeed commanded (the real motive power being interested citizens and not the Legislature) the expropriation of portions of two important thoroughfares. The results of this craze for public expropriation have been touched on elsewhere in these Studies. It may be merely remarked now that this pernicious example of mandatory special

[1] 52 Vic. cap. 79.

legislation was followed in succeeding years by a perfect avalanche of similar legislative commands, all procured, as in the previous instance, at the behest of the city council or parties interested in obtaining good prices for their lands and buildings. Almost a decade of extravagant and rash administration had its natural result in a general protest from the citizens. It was decided once more to revise and consolidate the charter. A special committee was appointed for the purpose and the result of their labours, after revision by a committee of aldermen, was submitted to the Legislature, with the result embodied in 62 Vic., cap. 58 (1899).

The charter of 1899 is a notable advance upon preceding charters in at least one respect to be immediately noted, but is marred by inconsistencies which prevent its distinguishing feature from wielding proper influence. The charter was excellent in its intention to obviate the vicious necessity of applying annually to the Legislature for further grants of powers by providing an ample measure of "home rule." With this object it was declared (sec. 299) that:

"It shall be lawful for the city council to enact, repeal or amend, and enforce by-laws for the peace, order, good government and general welfare of the city of Montreal, and for all matters and things whatsoever that concern and affect the city of Montreal as a city and body public and corporate, provided always that such by-laws be not repugnant to the laws of this province or of Canada, nor contrary to any special provisions of this Charter."

Borrowing the phraseology of the British North America Act the section continues as follows:

"And for the greater certainty, but not so as to restrict the scope of the foregoing provision or of any power otherwise conferred by this charter, nor to exceed the proviso hereinabove mentioned, it is hereby declared that the authority and jurisdiction of the said city council extends and shall hereafter extend to all matters coming within and affecting or affected by the classes of subjects next hereinafter mentioned, that is to say: 1. The raising of money by taxation; 2. The borrowing of money on the city's credit; 3. Streets, lands, and highways, and the rights of passage above, across, along or beneath the same; 4. Sewers, drains, and aqueducts; 5. Parks, squares and ferries; 6. License for trading and peddling; 7. The public peace and safety; 8. Health and sanitation; 9. Vaccination and inoculation; 10. Public works and improvements; 11. Explosive substances; 12. Nuisances; 13. Markets and abattoirs; 14. Decency and good morals; 15. Masters and servants; 16. Water, light, heat, electricity and railways; 17. The granting of franchises and privileges to persons or companies; 18. The inspection of food."

The foregoing conveyed a wide grant of powers and it is to

be regretted, not alone for the sake of consistency and form, but for its practical result, that the next section should proceed (even if not by way of limitation) to detail the specific matters and things regarding which by-laws might be passed. The practical result has been twofold: First, a singular reluctance on the part of the city to avail itself of the general powers granted, with frequent applications to the Legislature to add to the one hundred and fourteen unnecessary delimitations that are set out in section 300, and, second, a tendency on the part of the courts, when the validity of any by-law is questioned, to test by the delimitating article exclusively.

The general grant of powers was perhaps wisely limited in respect of "borrowing money on the credit of the city" by sections 343 *et seq.*, which fix 15 per cent. of the taxable real estate as a general standard, but it was certainly unnecessary to obtain special powers to impose the long list of special taxes enumerated in sections 363 and 364. The power to impose these was clearly conveyed by section 299. The result has been that for special taxation, as in other connections, fresh legislation has been constantly invoked. The city does not even yet seem to realize the uncommonly large measure of autonomy it really possesses but persistently refuses to exercise. The vice of frequent application to the Legislature permits interested parties to use the opportunity for legislation in their private interest.

Extension of Civic Area

The growth of homesteads, villages, towns and cities in the vicinity of Montreal, and their gradual although not yet complete absorption into the city is an interesting chapter. Influences of local geographical conformation, climate and the rise of suburban business undertakings have led to intermittent precipitations of populations about Montreal. In England, where horse traffic has long been the rule, we find the country towns, ranging with singular uniformity according to the roads and gradients, separated and yet within touch at eight and fifteen miles. In accordance with a very similar law, the various villages surrounding Montreal grew up, distinctly separated from it by land more or less under cultivation; and yet within easy coming and going distance by horse. The alteration of distances through the in-

vention of steam power, followed by the electric tram, introduced the next stage.[1]

The revised and consolidated charter of 1874 empowered the city council by the concurrent vote of three-fourths of its members to extend the limits of the city by annexing for all municipal purposes any adjoining municipality, upon mutual consent and the passage of a by-law according to special procedure duly outlined. This provision was repeated in the revised charters of both 1889 and 1899. In the year 1906 it was taken advantage of by the towns of St. Henry and St. Cunegonde lying immediately adjacent to Montreal, and to the eye not distinguishable from it. Negotiations are steadily going on with other suburban municipalities with a view to the creation of a larger Montreal. Though sentimental reasons play a part, it is also in part a measure of self-protection. Whether these adjacent towns and cities become formally part of the city or not, in many ways they do form part of the city, owing their origin to it and constantly depending upon it. Moreover, when they begin to give evidence of bad management in finance (as referred to in the following paper) or sanitation, the parent city becomes at once concerned. In 1883 when the town of Hochelaga was annexed, the city assumed its assets and liabilities and the town became a new ward in the city. Certain industrial establishments which were exempt from taxes in Hochelaga were allowed to enjoy these exemptions for limited terms.[2] In 1884 the town of St. Jean Baptiste, in 1887 the village of St. Gabriel and in 1893 the town of Côte St. Louis became, like Hochelaga, wards of the city of Montreal with representation in the city council as such.[3] By by-laws adopted on the 30th October and the 4th December, 1905, the cities of St. Henry and St. Cunegonde respectively with a combined population of 40,000 were formally incorporated with Montreal,[4] each city becoming a ward with the usual representation of two aldermen in the council. The village of Rosemount was annexed to St. Mary's ward by by-law, dated 2nd April, 1906, and a portion of the parish of Sault-au-Recollet was

[1] See H. G. Wells, *Anticipations*.

[2] By-laws of the City of Montreal, 1893, p. 368.

[3] Ibid. pp. 375 and 382.

[4] By-laws 342 and 350.

added to St. Denis ward in virtue of a by-law passed on the 5th November, 1906.[1] Negotiations are now pending for the further annexation of such large and populous communities, lying absolutely contiguous to the city, as Maisonneuve in the east, and St. Louis and Outremont to the north. The wealthy and populous city of Westmount, lying north-west of the city, shows, however, no inclination to unite formally with Montreal, although the vast majority of householders by their commercial affinities are citizens of Montreal, making use of Westmount as a place of residence.

There is usually some special incentive to annexation. For example St. Henry's debt when united with Montreal was 25.55 per cent. of its taxable property. St. Cunegonde's was 20.37 per cent. These figures show that the line of safety, always fixed at 15 per cent., had been considerably overstepped and that the time was ripe for a change of régime. Common interest in drainage and public health, prevention of defective alignment levels and related conditions, of disturbing contracts with light and traction companies, etc., were additional reasons. At the time of writing the city's area is about twelve square miles and its population somewhat over 400,000.

Improvements of Highways

Few cities (certainly none in America) are more compactly built than Montreal. Owing in part to fears of incursions by the Iroquois, in part in accordance with old custom, the streets were narrow. The old town until 1801 was enclosed within walls, and the natural tendency was, of course, to continue within this shelter. The main roads as built by the intendants were not more than twenty-four feet wide and the cross streets were frequently narrower. As the city extended the newer streets were given greater width, but the utility and desirability of ample spaces are comparatively modern conceptions, so that, in spite of many alterations to street lines, Montreal retains the compactness and narrow thoroughfares which mark nearly all cities whose origin antedates the nineteenth century. St. Paul street, a long and important thoroughfare, has to-day an average width of 32 feet,

[1] By-laws 353 and 360.

but has been widened at intervals during the past two centuries from an original width of probably not more than twenty feet. Such streets in the heart of Montreal to-day as St. Vincent (24 feet), St. Gabriel (25 feet), St. Claude (18 feet), St. Amable (14 to 18 feet) are typical of the old régime. In 1706 an ordinance of the intendant Randot fixed the width of "les grands chemins" at 24 feet, so that the prevailing standard was probably less.[1] In May, 1796, the width of streets was fixed by the first provincial Parliament at 30 feet. In 1841 the city was empowered to improve the thoroughfares,[2] as also in many a later statute.

Those who are interested in the later history of the streets and highways of Montreal will find interesting data in a book which is kept in the city surveyor's office. All streets here entered are deemed to be public highways or grounds; but the record of changes in width, length, name, etc., are also important matters of record.[3]

The by-laws codified in 1865 fixed forty feet as the minimum width for new streets or extensions,[4] although the charter of 1861 granted the power to make sixty feet such a minimum;[5] but in 1874 the lesser standard was reverted to (37 Vic., cap. 51, sec. 167). The present by-laws have enacted that every new street shall be at least 80 feet wide, unless the council by special resolution shall decide otherwise, and provided that in no case shall the street be less than sixty-six feet.[6]

The mode established by amendment to the charter of 1840[7] for establishing the compensation due to proprietors whose lands were expropriated for streets and like public purposes was simple and effective and continued in vogue for many years. It consisted in voluntary agreement between the proprietor and the city, failing which, resort might be had to arbitration. In the last resort a jury was summoned by the justices in special session to determine the compensation by a majority of at least six (nine

[1] Édits et Ordonnances (1803) Vol. II. p. 170.
[2] 4 Vic. cap. 32, sec. 30 (1841).
[3] 52 Vic. cap. 79, sec. 211.
[4] By-laws (1865), chap. 29, sec. 2.
[5] 14-15 Vic. cap. 128, sec. 58.
[6] By-law no. 270, sec. 14.
[7] 4 Vic. cap. 32, sec. 32.

to agree). Later, the system of evaluation by three commissioners was adopted. In 1874[1] the city was empowered to acquire any land within its limit, for opening or widening public streets, squares or other public places. Commissioners were to be appointed by the superior court. The statute specified their qualifications and the procedure to be followed. At the same time the city was empowered to prepare a general plan of the city showing the streets, public highways, etc., of each ward, their width and alignment, and upon completion to present the same, ward by ward if necessary, to the superior court for confirmation or, as it was later called, homologation. The effect of the confirmation of the plan was to prevent proprietors from building or encroaching upon any new alignment of streets established in such plan, by denying them any compensation for their buildings in the event of the city desiring to make a street of uniform width in accordance with the plan. The plans preserved the old streets but adopted an enlarged alignment in many cases. This was quite feasible when a street was not wholly built upon, and in such a case the new buildings were required to conform to the new line as were the older buildings when rebuilt.

In accordance with the statute of 1874, therefore, plans of the different wards were prepared in the city surveyor's office, and at different dates during the next few years beginning with 1876 were submitted to the superior court for confirmation and were duly confirmed. This apparently simple and statutory method became in later years the means of extensive and costly expropriations which the city was forced to undertake by interested parties who, under the guise of carrying forward public improvements by street widening, secured the highest prices for their lands or buildings together with the satisfaction of ingenious claims for damages incident to dispossession of their property, such as deterioration of the value of the residues of land, loss of good will in business, loss owing to the interruption of leases with tenants, increase of rent to be paid elsewhere, and other like claims. To the claims of proprietors were added the claims of tenants who exacted compensation for eviction, increase of rent to be paid elsewhere, loss owing to interruption of business, the cost of moving and reinstallation. But this was not all. Pro-

[1] 37 Vic. cap. 51, sec. 167, *et seq.*

vision had to be made for the fees of legal attorneys and the special taxation of architects and expert witnesses summoned to establish these extravagant claims, too often allowed by commissioners who, as laymen, unskilled in exposing sophistry, and often sympathizing with the claimants, were incapable in many instances of determining true and just indemnities.

The charter of 1874, like those of 1851 and 1889, contained rules of procedure respecting expropriation, of a general character, in the event of immovable property not being acquired by agreement. The initiative under each of these Acts lay entirely with the city council. It lay with this body to say what lands should be acquired for public purposes. The records of the road department show that at least an equal number of acquisitions were by agreement as compared with those of legal process. In 1889, however, a system of quinquennial expropriations, reckoning from the year 1885, was authorized.[1] This permitted proprietors who had built upon the new line as shown in any duly homologated ward-map to obtain compensation for those portions of their lands which lay between the new and the old lines; but the whole cost of such improvements was laid upon the proprietors benefited thereby as determined by commissioners, and this commonly included the proprietors on both sides of the street affected. But the attractiveness of the scheme made its quinquennial character brief; in the following year (1890) it was made annual upon by-law passed by the council. The same statute, however, authorized the city to widen an extraordinarily large number of streets, and the city council, nothing loath, embarked upon a series of costly "improvements" which, combined with extensive street improvements of what was called a "permanent character" as distinguished from repairs, speedily involved the city in heavy indebtedness.

The legislature of 1890[2] not only made the quinquennial expropriation of occasional lands lying between the old and new lines of streets an annual affair, but "authorized" the city without any previous determination of the probable cost and without, as will be seen, in any way effectively limiting the cost in many instances, to make and execute a long list of important improve-

[1] 52 Vic. cap. 79, sec. 222.
[2] 54 Vic. cap. 78, sec. 2.

ments. The statutes of 1892, 1893, 1894, and 1896 all contained further extensive projects for street widening, not in themselves unnecessary, but all vicious in that the total cost was in no case previously estimated or determined and also because the legal expenses which the city was condemned to pay had not been provided for. The expenditure for street widening during nine years, 1888-1896, amounted to between seven and eight millions of dollars. Of that sum ($7,242,695) the city's original contribution was $1,634,412, but this was increased by legal charges and judgments to $2,685,883.[1]

The Council

Down to the time of the revision of the charter in 1851, the position of mayor does not seem to have been generally coveted, if one may judge from the provision of a penalty of £100 for non-acceptance of the office. In former charters a like penalty existed for councillors.[2] In the various charter revisions subsequent to 1851 these penalties completely disappear. It is to be noted that the municipal code applicable to the rural part still contains penal clauses for refusal to serve as councillor, warden or mayor.[3] The charter of 1851 continued the representation of three councillors for each ward.[4] The councillors elected nine of their number (one from each ward) to be aldermen. This honorific distinction between councillors and aldermen existed down to 1889 when the members of the city council were all styled aldermen. Another feature of the municipal elections which existed until 1899, the date of the latest consolidation, is worthy of note. Up to this time one-third of the council retired annually, although eligible for re-election. The mayor alone continued to be elected annually, although it was an unwritten law for him to be re-elected for a second term. The charter of 1899 provided that both mayor and council should all be elected every two years, the representation of each ward being reduced at the same time to two aldermen. In adopting the principle of a numerically small coun-

[1] City of Montreal, Annual Report, 1896.

[2] 14-15 Vic. cap. 128, sec. 16.

[3] Municipal Code, Arts. 117, 254, 334.

[4] 1 Wm. IV. cap. 54, sec. 17.

cil, American as contrasted with English precedent would seem to have been followed. As regards the length of term and the system of rotation the wisdom of the change seems very doubtful. It has been found that biennial elections afford a less effective check than the older system.

Montreal is divided into twenty wards or electoral divisions which vary greatly in area, population, number of voters and assessment. The areas range from 42 to 1,230 acres, the resident population from 439 to 40,631 and the number of voters from 847 to 7,237. The divisions are the outcome of various influences which have operated either singly or in combination, viz., population, nationality, class interests, condition of annexation and general policy, and are described in the following paper.

A property qualification is required of both mayor and aldermen, for the former an assessed value of $10,000, and one of $2,000 for an alderman. Its abolition has been proposed in and out of the city council. It would seem that such a policy could not well be made in Montreal alone, as property qualification is at the very basis of municipal representation and the provincial government would have to pass upon the question, not only for Montreal, but for the whole province.

The right to vote at municipal elections is dependent on the payment of all personal taxes, water, business, etc. This condition disfranchises over 30 per cent. of the electors and has occasionally met with great opposition. It has led incidentally to a rather curious anomaly. In three of the new wards recently annexed to the city, water is supplied by a private company; so that their electors, although they may be indebted to the company for water charges, are nevertheless entitled to vote, while the electors of the other wards, also in default, are deprived of their franchise.

The Harbour Board

The improvement of the harbour of Montreal as a port of shipment has long been not only a matter of municipal but of national concern. In 1830 a statute, entitled "An Act for the Improvement of the Harbour of Montreal," was passed and a board of three commissioners holding office for six years was the outcome. The magnificent stone quay, commonly called the

" revêtement wall," was built after the plans of Captain Piper, the work being begun in 1832.

In 1850 the board extended its activity beyond the harbour to the task of deepening the channel in Lake St. Peter. In 1855 the president of the Board of Trade and the mayor of the city were *ex-officio* added to its members. In 1873 the number of commissioners was increased to nine, five nominated by the Crown, one by the Board of Trade, one by the Corn Exchange, one by the merchant shippers, and the mayor *ex-officio*. In the meantime the river with its lights, buoys, pilots, etc., was under the care of the Trinity Board of Quebec. By an ordinance of the special council in 1839 (2 Vic., cap. 19), the Trinity Board of Montreal was constituted and the port of Montreal declared to extend from Portneuf on the east to the boundary line of Upper Canada on the west. In 1849 (12 Vic., cap 117) a new and amended Act was passed. In 1873 (36 Vic., cap. 61) Trinity House was dissolved and its duties were assigned to the harbour commissioner.

In 1894 an Act was passed by the Dominion Parliament amending and consolidating the Acts relating to the harbour commissioners.[1] The board consisted of eleven members, six being appointed by the Governor-in-council, the others being the mayor of Montreal *ex-officio,* representatives from the Montreal Board of Trade, the Montreal Corn Exchange Association, La Chambre de Commerce, and the shipping interest. The president received a salary of $2,000 *per annum* and the other commissioners were also remunerated. General and particular powers were defined by the Act, including the power to enact by-laws for the port. In a schedule annexed to 57-58 Vic., cap. 48 will be found a list of the various statutes affecting the harbour, pilots, Trinity House, the deepening of the ship channel, tonnage dues, wreck and salvage, etc. Other statutes affecting the board are the Act 59 Vic., cap. 10, authorizing the Governor-in-council to advance $2,000,000 to the board; the Act 61 Vic., cap. 47, authorizing a further advance of a like sum; 62-63 Vic., cap. 36, 1 Edward VII., cap 9, and 3 Edward VII., cap. 36, amending Acts. Since January 1st, 1907, the harbour commission consists of but three members appointed by the Dominion

[1] 57-58 Vic. cap. 48.

Government of whom the president receives an annual salary of $7,000 and his colleagues $5,000 each.

Public Schools

The public schools of Montreal are under two boards, one Catholic and one Protestant, entirely distinct from the municipal corporation, which simply collects the school taxes and hands over the amounts to the two boards. The Protestant board consists of six members, three elected by the city council and three by the Government; the Catholic board of nine members, three appointed by the Government, three by the council and three by the archbishop. So far, the nominees of the appointing bodies for the Catholic board have been two-thirds French, one-third English. The school tax is two-fifths of one per cent. of the city's realty assessment, and is apportioned into three panels, Protestant, Roman Catholic and neutral. The neutral panel, made up chiefly of stock companies, is divided in the proportion of the Protestant and Catholic population as established by the census. While the Protestants, claiming that most of the shareholders of these incorporated companies are Protestants, ask for another basis of division of these neutral taxes, the Catholics contend that all taxes should form a general fund to be distributed according to population.

The original constitution of these boards of school commissioners was fixed in 1846 by 9 Vic., cap. 27. This statute applied to the province generally, but special provisions governed the cities of Quebec and Montreal which may be traced in the Consolidated Statutes of Lower Canada, cap. 15, ss. 128-134. The composition of the two boards still stands as then enacted, viz., six members each, of whom the "Corporation" appoints three in each case. The system followed by the Catholic board affords a contrast to that adopted by the sister board in that a considerable number of private schools and schools directed by Christian fraternities and sisterhoods are subsidized, whereas the Protestant board controls its schools in every respect. By 32 Vic., cap. 16, sec. 17 (1869), the Lieutenant-Governor-in-council was authorized to name three commissioners and the corporations of Montreal and Quebec to name three other commissioners to constitute the board of school commissioners—the

same provision applying to both boards. For a number of years it was the custom of the city council to name distinguished citizens. The late Sir William Dawson for many years was a commissioner. But latterly the invariable custom is to name members of their own body.

General Observations

It will have been seen that Montreal's civic constitution is based upon the representation system and illustrates both the advantages and the disadvantages of that system. The advantages consist in public discussion of civic questions, the disadvantages in a minimum of practical efficiency. Many influential citizens, disgusted with the importation of fancied race and ward interests into matters affecting the general welfare, and the impoverished quality of public service owing to the system of aldermanic patronage, have openly proclaimed their preference for the abolition of the common council, and the constitution of a commission of three. But if chosen by popular vote it is not clear that such a commission would result in any higher average of capacity than now obtains; while if appointed by the Lieutenant-Governor-in-council, the loss to civic *amour propre* from the abandonment of the cherished right of the people to elect their representatives would prevent the system from attaining permanence. Constitutionally, therefore, the city government is likely to continue upon established lines; but until it passes the period of transition consequent upon its adaptation of itself to the new public utilities of the time, it would be the part of wisdom to secure some annual instead of biennial check upon her representatives, by providing for the retirement every year of a portion of the council.

Montreal is a sufferer from the unsightly, often dangerous, and usually monopolistic utilization of modern public franchises, electric tramways, lighting, telephones and telegraphs. Companies organized to exploit these utilities have obtained the necessary privileges from Legislature or Parliament, and often display scant concern for the quality of their service to the city notwithstanding their use of its streets and highways. Hitherto the companies, by successful lobbying, have been able to prevent hostile or regulating legislation.

An excellent illustration of the interference of the Legislature with municipal autonomy occurs in the charter of the Montreal Light, Heat and Power Co. (1 Edw. VII., cap. 66.) This company, incorporated with a capital stock of one million dollars, acquired the power to exercise the franchise and charter rights of other companies by lease or purchase, and a number of these being in existence, viz., The Royal Electric Company, The Imperial Electric Company, The Montreal Gas Company, The Lachine Rapids Hydraulic and Land Company, availed itself of its powers to unite in itself these various competitive companies. By section 10 the company acquires the right to enter upon the streets and construct under or over the streets or public highways, within a radius of one hundred miles from the city, all such pipes, lines, conduits and other constructions as may be necessary for the purpose of its business. By one of its by-laws (No. 343), which requires the placing of wires in underground conduits, the city sought to prevent the company from erecting poles in one of the streets by suit before the Recorder's court. The foregoing statute was pleaded, and, although the city has succeeded before the courts of first instance so far by showing that poles could not really be "necessary" where conduits are possible, the distinction is certainly fine, and the scope of the statute shows broad interference with the city's powers of control.

At the present moment a keen struggle is going on between the Montreal Light, Heat and Power Co. and an influential portion of the citizens with reference to the renewal of existing contracts for supplying gas and electric lighting to the city. The issue is one of price, and it is not improbable that the Legislature, which has been appealed to, may give the popular voice a chance to be heard by referring the dispute to a referendum. In fact, as we write, the Legislature is considering, and will doubtless approve "An Act concerning the granting of certain privileges, rights and franchises by municipalities," introduced by the Prime Minister of the province.

The Legislature of the province of Quebec has enacted a Cities and Towns Act (1903), containing general clauses applicable to cities and towns not incorporated under special charters or statutes. But Montreal, in common with most of the large towns

and cities of the province, possesses its special charters and is not affected by any general Act of the kind. Yet the Legislature is constantly appealed to, to revise or increase the city's local authority. As already remarked, this is partly due to custom, but chiefly it may be to that procedure being the line of least resistance in view of local differences of opinion and alternative litigation. The faith in legislative authority to do or undo becomes at times even amusing. But if local government is to be a success, the frank recognition of a rational division of powers between province and municipality is essential.

THE CIVIC ADMINISTRATION OF MONTREAL

BY

THE HONOURABLE PAUL G. MARTINEAU

JUDGE OF THE SUPERIOR COURT FOR THE PROVINCE OF QUEBEC

Committees

Two clauses relating to the government of the city are to be found in all the Acts consolidating or revising the charters of Montreal. One declares "*that the administration of its affairs* is vested in the council," the other enacts "that the council shall appoint each year from its members as many committees as it may deem necessary *for the supervision of the administration* of the several civic departments for which they are respectively named." From these it is clear that the council is the administering body while the committees are simply supervising ones. Only the first has power to determine policy, the others are appointed to see that the policy is properly carried out. Yet the system in force for many decades, and accepted by all as necessary and inevitable, confers on the committees the practical administration of civic affairs, without, it is claimed, violating the law. It is considered that, when appropriating a given sum, say, for street watering, the council decides that the street shall be watered, and that the road committee in watering the streets with the amount so voted is but supervising a work ordered by the council. The distinction, subtle as it may appear, is nevertheless a real and fair one, the mandate being general instead of special. Absence of instructions from the council when authorizing expenses gives large discretionary powers to the committees in spending. The result is great diversity in administrative rules and methods. One committee may execute all its works by contract, others by day work; one will invariably call for public tenders, another will be satisfied with private ones; one will call for tenders only when the charter or by-laws make it imperative, others will invite competition under all circumstances; one will buy its material from wholesale merchants, others from the retail trade; one will use cement of a certain brand, another will use for the same purpose a different one. Whatever one may think of results it is certain that some uniformity of practice would be preferable.

The standing committees are ten in number: finance, roads, water, police, fire, markets, incineration, hygiene, parks, and city

hall. Each committee has seven members—a rather large number for the expedition of business. By the terms of the charter the members of the finance committee cannot form part of any other permanent committee. It is an unwritten law, moreover, that the members of the roads committee, and the chairmen of the most important committees, are appointed to but one committee, in order that no member should possess an undue influence over his colleagues. This rule could be applied with equal if not perhaps greater advantage to every alderman.

The finance committee is the most important. It is specially created by the charter, whilst the others are established by by-laws. Its statutory powers consist in the preparation of the annual budget and the examination of all demands for appropriations of money. The finance committee may recommend or refuse any appropriation by a mere majority of members present at the meeting where they are submitted. Its decisions can be overridden only by a majority of all the members of the council. Under the charter originally framed, a vote of three-fourths of the members of the whole council was required. The provision that no member of another standing committee could sit on the finance committee aimed at confining the powers of the finance committee principally to financial matters, making it a sort of Board of Control, whose members would be relieved from the cares and influences of patronage. It has, however, been deliberately ignored in that the financial committee has not done away with the financial powers of other committees. On the other hand the finance committee deals, by formal consent of the council, and sometimes without it, with many objects not mentioned in the charter, such as collection of the revenues, nomination of all subordinate clerks employed in the collection and assessment departments, city clerk, law departments, loans and insurance matters. Many indeed believe that the powers of the finance committee might with advantage be restricted to the voting of credits, and a permanent revenue committee be entrusted with its other financial powers.

Next in importance to the finance stands the roads committee. Outside of the laying of water-pipes, which is done by the water committee, and of matters relating to the removal of garbage and scavenging, done by the incineration department, the roads

committee may be said to have supervision over all matters affecting the streets of the city, including the public franchises.

The roads, water and incineration departments clash at times with one another, though attempts to effect a consolidation of the three in a public works department have so far been futile. The great stumbling-block seems to be the fear of losing patronage. Similar considerations successfully prevented the appointment some years ago of another permanent committee to be entrusted with the different municipal shops and stores. The other committees do not call for any special remark.

Each committee forms a civic department with its own staff under the immediate supervision of a head officer, who himself is under the control of his committee. Heads of departments are appointed and dismissed by council. The dismissal of the comptroller, however, requires a two-thirds vote of the council. Subordinate clerks are appointed and dismissed by the committees, ordinary working men by the foremen. Constables and firemen are appointed by the committees, suspended or dismissed by the chiefs.

Departmental administration being left to the committees, they usually act only after receiving and considering the report and advice of the departmental heads. The views of the latter, however, are not always acted upon, though to them is entrusted the execution of the decisions come to. It must be admitted that much room is found here for aldermanic influence. Each department prepares an annual report which is printed in a "Municipal Gazette," as also in pamphlet form. These reports contain much valuable information to students of municipal affairs. They lack, however, as in most cities, comparative statements and statistics. If the "Union of Canadian Municipalities" could induce its members to agree upon a uniform system of reports and statistics it would confer a great boon on municipal administration.

Salaries of departmental heads vary from $1,700, which the superintendent of incineration receives, to $4,250 paid to the city engineer and the comptroller, $5,000 paid to the treasurer and to the city clerk, and $5,250 to the chief attorney. The salaries are, as a rule, higher than in any other Canadian city and considerably higher than corresponding salaries paid by the

federal or provincial governments, which might fairly be the criterion for all public salaries. In fixing the salaries, or in granting increases, there is no system followed. As a rule all depends upon the influence which can be brought to bear upon the aldermen.

Budget

The budget is voted in the month of December for the following fiscal year beginning on the first of January. The sums voted cannot exceed the combined amount of the realty, business and water taxes of the current year, plus the total revenue from other sources collected up to the first of December, to which is added the approximated revenue for December computed on the average receipts of that month during the last three years. The budget is thus fixed on the presumption that the revenue for any year will at least equal the revenues of the previous year. If there is a deficit it has to be made good in the following budget; if there is a surplus, it is available, when collected, for ordinary expenses. Since this system has been established surpluses have been the rule. Of the amount voted 2 per cent. must be reserved to cover any losses in the revenue and 3 per cent. for such unforeseen expenses as judgments, epidemics, inundations and damages caused by irresistible forces. This provision is often evaded and the reserve used for ordinary expenses.

Each committee prepares a detailed statement of the amounts required for its respective department, and these statements, the aggregate amount of which generally greatly exceeds the amount available, are submitted to the finance committee, upon which devolves the disagreeable task of making necessary reductions. Formerly the budget was first discussed by all the chairmen of committees. This practice gave good results, as the chairmen were more conversant with the needs of their department than many new or even old members of the finance committee who had never served on any other permanent committee. The present practice is to be deplored of appointing newly elected aldermen unfamiliar with departmental needs and not in a position to assess the reliability of the recommendations of the several heads of departments to this committee.

No payment can be made by the treasurer unless the comp-

troller issues a certificate that funds have legally been voted and are available for that purpose. An alderman authorizing an expense or payment in the absence of an appropriation for it is liable to be disqualified. The practice, however, is not uncommon and thus far no penalties have been exacted.

While each committee is voted an annual appropriation it cannot award a contract for over $1,000 unless it calls for public tenders and the award is ratified by the council. This rule is also eluded by giving several small contracts in place of a single large one.

Revenues

The principal sources of revenue are real estate and business taxes, water rates, licenses, special taxes and fines. The chief tax is the assessment on immovable property, limited to one per cent. Water rates come next in importance. They are fixed at 5 per cent. on the yearly assessed rental value of all buildings or part of buildings occupied. The smallest amount paid for domestic use is $1.50, the largest $225.00. This tax may be paid in two instalments; in case of non-payment the water is turned off, except where there are conditions of real distress. The non-payment of the water tax as well as the non-payment of all other personal taxes is a cause of disfranchisement, as has been pointed out by Mr. Weir. This is a relic of an antiquarian legislation which should disappear from the charter of a city like Montreal.

The so-called "business tax" is imposed on all trades, manufacturers, financial or commercial institutions, premises occupied as warehouses or storehouses, occupations, arts, professions, or means of profit and livelihood, carried on or exercised by any person in the city at the rate of 7½ per cent., which cannot be exceeded, of the annual rental value of the premises in which such trades are exercised or carried on. Keepers of clubs, inns, hotels, saloons or restaurants pay a special business tax, also based upon the annual assessed value of their premises, varying from $27.00 on an assessed yearly value of $160.00 to $1,627.50 on an assessed yearly value of $35,500.00. Special taxes and licenses are also levied. They range from $1.00 to $200.00 and include those imposed upon milkmen, bakers, carters, owners of horses,

employment bureaus, public laundries, private hospitals, real estate and all itinerant traders, billiard and pool rooms, real estate agents, pedlars, hawkers, auctioneers, pawn brokers, hucksters, junk and second-hand dealers, bowling alleys, shooting galleries, butchers' shops, banks, insurance companies. A discount of 2 and 3 per cent. respectively is allowed on business and water taxes, if promptly paid. This discount was at one time also allowed on the realty tax.

Warrants of seizure are issued from the Recorder's Court against the goods and chattels of parties in default with their business or water taxes. The immovable properties owing taxes are sold by the sheriff upon a written order of the city treasurer. This process is a summary, quick and efficient way of recovering the tax. The loss on the realty tax is about four-tenths of one per cent., on the business tax about 6 per cent., on the water tax about 8 per cent. The following table gives the amount of tax receipts for the year 1905 according to the different sources:

Assessments being 1 per cent. for municipal purposes, $\frac{1}{4}$ per cent. for Roman Catholic and $\frac{2}{5}$ per cent. for Protestant school tax	$2,290,501 32
Water rates	911,520 13
Business and personal taxes	357,209 04
Licenses	204,688 75
Recorder's Court fines	43,186 37
Market revenue	100,761 59
Grocers' and innkeepers' certificates	7,312 00
Departmental permits	10,451 72
Street railway percentages	147,724 10
Terminal railway	317 30
Miscellaneous revenue	30,490 11
Interest collected	45,399 61
Total	$4,149,562 04

The realty tax shows the greatest elasticity. Between 1885 and 1905 it increased 153 per cent., as against an increase of 89 per cent. for the business tax and 87 per cent. for the water taxes.

The city's revenues have long been known to be insufficient for its steadily growing needs. But few have placed the problem of additional taxation squarely before the public. The easier road has been chosen of raising funds by charter amendments, book-keeping devices, disposing of public franchises upon terms amounting to a sacrifice of the legitimate assets of the suc-

ceeding generations, or by issuing fresh debentures in spite of the fact that interest charges are already the greatest burden on our revenues. It is highly advisable for the city to appoint an independent commission of competent economists to review the general system of taxation, and advise as to the ways and means for a larger tax roll. In the meantime one may remark that Montreal has been greatly hampered by not having any adequate system of local improvement assessments as in most other cities.

Public Debt

The public debt was consolidated in 1868, in 1888 and in 1889. The first consolidation was to the amount of $5,000,000, divided into three classes; two classes were perpetual and not redeemable, the other was for 25 years with a sinking fund of 2 per cent. In the consolidation of 1888, the city was authorized to apply the accumulated sinking funds, then amounting to $2,410,000, to reducing the civic debt, and to borrow for general public improvement to the extent of 15 per cent. on its real estate assessed value.

By 1899 the city debt, bonded and floating, had increased to $27,000,000, notwithstanding the above limitation. This was largely the result of a craze for expropriations, of extravagant, unauthorized and sometimes concealed expenses, and of a policy by which permanent improvements, that should have been paid in whole or in part by the proprietors, were carried out at the sole cost of the city. It seemed for a time that the progress and advancement of the city lay entirely in the widening of its streets. One after the other, they were widened at a high cost to the city, without regard to initial or ultimate financial considerations. If by chance the council would not agree at once to make the imaginary improvement, the Legislature would intervene and command the city council to undertake the work. Expenditures came to such a pass that more than once the appropriations voted to certain committees in December were exhausted before the end of January, in paying debts of the previous year.

Although $27,000,000 represented more than 15 per cent. of the assessed value of the real estate, it was not thought judicious to stop all borrowing powers, as such policy would have meant the suspension for many years to come of all permanent improve-

ments. Therefore during such time as the consolidated debt of the city would exceed 15 per cent. of the taxable real estate of the city, the city was given power to borrow each year, for the purpose of carrying on necessary public works, a sum of money not exceeding 10 per cent. of the increase in taxable real estate, shown by the assessment roll in force, over that of the year immediately preceding, provided that the sum so borrowed should not in any one year exceed $300,000. Under this clause $1,960,000 has been borrowed since 1899. Such limitations have made it necessary to confine civic expenditures to only urgent works. Next year, however, the bonded debt will have again reached its normal percentage and many long desired improvements will be made. It is to be noted that the city will not be thereby any richer, and that the additional interest charges will have to be paid out of a revenue already insufficient.

The city is not absolutely estopped from borrowing. It may borrow any amount and for any purpose, subject to its levying a special tax on realty to cover the interest and provide a sinking fund sufficient to redeem the loan at maturity. The by-law must further mention the objects for which the loan is made and be approved of by a majority of the members of the whole council and ratified by the ratepayers. Only one such by-law was ever passed by the council and submitted to the public. It was to equip the fire service on the lines suggested by the expert of the Underwriters' Association. The referendum was in this instance a complete failure. Not one in a hundred of the electors went to the polls. In the ward most directly interested, where the electors are amongst the most influential of the citizens, the percentage of voters was so small as to be ridiculous: four electors out of two thousand registered their vote!

The city may also issue temporary bonds for the proprietors' shares of the costs of the few public improvements that are chargeable to them until such time as the special assessments are collected. In 1905 there was $644,120 due to the city under this heading.[1]

[1] Whether loans should be made through a broker or directly by the city treasurer is a question warmly discussed whenever it is presented to the council.

Municipal Works

The varied work of the road department, with the exception of the construction of sewers and of street paving, is done under the direct supervision of the department. The city is divided into two parts, east and west, with a head foreman for each division and a sub-foreman for each ward.

There are about 200 miles of street, 32.70 miles being paved with permanent material: asphalt, granite, scoria and wood. "Rock" asphalt was previously used, but has been replaced with "Trinidad." And now "Trinidad" may be replaced by Bermuda asphalt. Montreal has been very unfortunate with its street paving. Original contracts called for a 15 years' guarantee, the last for one of two years only. The city operates an asphalt plant for its own repairs, as well as a fine workshop for the manufacture of most of its tools, etc.

There are 70 miles of permanent sidewalks. It is only during the last few years that such sidewalks are being actively laid. Formerly the city could lay them only with the consent of the fronting proprietors, who were liable for one-half the cost. Their consent is no longer necessary. The defective clearing of sidewalks in winter had been the occasion of many lawsuits against the city on account of accidents. This led finally to the experiment of the city taking charge of the cleaning. The work was in every respect satisfactory, the special tax small, and the assessed parties well-to-do proprietors; but petty objections as to the validity of the by-law led to its being rescinded.

Sewage empties into the St. Lawrence river, but one ward is drained to the other side of the island into the Rivière des Prairies. The system of sewers is as yet unequal to the work demanded and is the cause of many suits for damages.

The water supply of the city, with the exception of three wards, is under the control of the municipal administration, which owns the aqueduct and imposes a rate or tax for payment. The three wards (formerly suburban towns) are supplied from a private company, the Montreal Water and Power Company. As in the case of all old cities, the aqueduct of Montreal had a very modest beginning. Towards 1800 the water from springs was diverted from Mount Royal and distributed through some of the streets of the city in wooden pipes. In 1815 this precarious supply was

replaced by a system of distribution of water pumped from the river and raised into tanks containing 240,000 imperial gallons. In 1845 the city bought this system from a private company, after which an epoch of progress was begun by the construction of a reservoir containing 3,000,000 imperial gallons, situated outside of the city at a place called "Côte à Baron." In 1853 the city began an aqueduct capable of supplying 5,000,000 imperial gallons daily. The system included an open canal 4¾ miles long, having its entrance about one mile above the Lachine Rapids, at an elevation of 37 feet above the level of the harbour of Montreal. The dimensions of the canal were 40 feet wide at the water surface and 8 feet deep. This canal, throughout most of its course, is actually used to supply the city at present. The water was then raised to a reservoir with a capacity of 15,000,000 imperial gallons on the slope of Mount Royal. With the extension of the population of the city to the heights east of Mount Royal, too high to be supplied by the system, the present high level system became necessary. There is now a reservoir midway on the mountain slope, and a pumping station to carry the water from the low to the high level distributing service, 422 feet above the level of water in the harbour. The entrance of the aqueduct was afterwards carried 3,000 feet up the river.[1] The contracts entered into by the municipalities before their annexation for water service have already caused considerable difficulties. The fact that those franchises have yet over 40 years to run makes expropriation seem advisable.

If we allow 4 per cent. interest on the capital account of the water works, $9,305,433, namely, $372,217, and add the annual maintenance of $220,000 we have a total yearly cost of $592,217. Against this stands a revenue from the sale of water of over $900,000, which leaves a net profit for the city of over forty per cent. It is urged that in the beginning of the enterprise there were large deficits and that if all the accounts were balanced, the average profits to date would be very moderate. But the water rate is not to be regarded as the price of this commodity; it is purely and simply an ordinary tax, and looked at as such it must be admitted that it is a progressive tax of a radical kind. The per caput consumption of water in 1903 was 88.60 gallons daily,

[1] See *History and Description of the Montreal Water Works*, by George Janin, C.E., Superintendent, reprinted from Journal of New England Water Works, Vol. XVII.

in 1904 97.57, in 1905 103.87, including water for industrial as well as municipal purposes.

Tramways

The existing contract with The Montreal Street Railway Company was made in 1892, for a term of 30 years, at the expiration of which the city may acquire the property. In case the city does not exercise its option, the contract is renewed indefinitely for periods of five years. The rights granted do not constitute an exclusive privilege or monopoly within the entire limits of the city, but only in the streets where lines have been established, with a preference on some others, should the council decide to have tramways thereon. The establishment of new routes and the time of service is left to the initiative of the council. This clause is one of the few valuable ones in the contract. The regular fare is five cents, but ordinary tickets are sold at the rate of 6 for 25 cts.; special tickets in the morning and afternoon, 8 for 25 cts.; school tickets, 10 for 25 cts. Transfers are given on all lines.

The percentage to be paid the city on the gross earnings is 4 per cent. up to $1,000,000; 6 per cent. from $1,000,000 to $1,500,000; 8 per cent. from $1,500,000 to $2,000,000; 10 per cent. from $2,000,000 to $2,500,000; 12 per cent. from $2,500,000 to $3,000,000; 15 per cent above $3,000,000. The amount paid in 1905 was $147,724.10. But the city's share of the cost of removing snow from the tracks was $76,795.66, which left the trifling return of only $70,828.44.

Considerable litigation has followed this contract. The two principal cases referred to the removal of snow from the railway tracks and to the percentage to be paid to the city. The company claimed that its obligation ceased when it had thrown the snow by its ploughs out of its tracks on each side of the street, and that it was bound to pay percentages only on fares received to travel within the city limits and not on fares received to or from outside municipalities to the city, although the travellers' trip was a continuous one. The city won the first case and lost the second.[1]

For a few years there was also in operation a suburban company running a single line into the city. The conditions originally imposed were more favourable for the city than were those of

[1] The company has 14.29 miles of single track and 52.81 miles of double tracks.

the larger company. The small company was to keep its roadbed in good order, water its tracks, remove the snow entirely at its own cost, sell tickets during working hours at the rate of 10 for 25 cts. and pay a percentage to the city of one per cent. on all gross earnings under $100,000; 2 per cent. up to $200,000 and so on. Not proving as successful as expected it successfully petitioned the council to make the contract with it identical with the other. The new arrangement was immediately followed by a merger with the general system.

The " Terminal " franchise, as it is called, has provoked a most important and complicated debate. The Terminal has a federal charter as an ordinary railway and was authorized to construct and operate branch lines in such streets as the city should indicate, and upon such terms as it should decide. Application was made to the council stating that the company intended to operate branch lines and requesting the city to designate the streets where those lines should run, and the terms upon which they were to be so constructed and operated. The request of the company was taken into consideration, and finally a by-law was adopted granting to the company the right to establish and operate branch lines in certain streets by electricity only, and for the sole purpose of carrying passengers, but for the limited period of five years, the company being then obliged to remove all its rails, poles, wires and appliances, should the contract not be renewed; furthermore, the by-law was to become operative only if the company agreed by a notarial deed to accept all the conditions imposed in the by-law. The company did not sign the notarial agreement, but petitioned the railway committee for an order to construct and operate branch lines in the streets designated in the by-law. The city, of course, had no objection to offer, but insisted that the order should be given subject to all the conditions imposed by the by-law and the signing of a notarial agreement accepting them. The company met this answer by the following argument:

" The Terminal owes its franchise to enter within the city limits to the federal government and not to the municipal authorities: consequently the latter, although empowered to prescribe the terms and conditions that it may think proper for the construction and operation of our branch lines, cannot impose any time limit to unlimited statutory rights. The railway commit-

tee has therefore jurisdiction to grant a general order for the construction and operation of said lines and, much more, to increase the time limit to 20 years, as the five years' limit is not only illegal, but unreasonable."

To this argument the city replied in substance:

"The terms of the company's charter are not imperative, and the council could refuse to designate any street. If so, it could allow the construction and operation of branches for such length of time only as it thought proper. The limit may be reasonable or not, but the railway committee is powerless to increase it, as it should be powerless to grant any passage order, if the city had absolutely refused to consider the matter. Assuming, however, that the railway committee could legally act, it should not interfere in a matter of purely local interest, such as the establishment of tramway lines."

The committee did not pass upon the case, but adjourned its consideration for a few months, and in the interval the terms of the contract were extended to ten years and the company signed the notarial agreement above referred to. The application to the committee was then renewed, and the city again insisted that the order should not issue except subject to all conditions contained in the contract. This was agreed to, but as a matter of fact, by some misunderstanding, the order was made without any restriction. What will be the consequences of this omission? None, if the city's pretensions are well founded, many, if they are not. Not only would the order stand in perpetuity as all railway orders made under the railway Act, but all the restrictions imposed on the company, inconsistent with its charter or the railway Act, would be illegal, and the relations of the city and the company would be governed more by the federal law than by the contract, and adjudicated upon by the railway commission and not by the court. It is sufficient to expose these possibilities to show how careful all legislatures should be in dealing with municipal franchises, and how abnormal, if constitutional, it is for the federal government to grant to a railway tramway privileges within a municipality.

Gas

The present gas contract was given in 1895 for a term of ten years with an option of buying the plant. If the option was not

exercised then the contract was to continue for another five years. Gas for lighting was to be sold at $1.20 per 1,000 feet, for cooking purposes at $1.00.

Before this agreement was entered into, the city called for tenders, and awarded the contract to a commercial firm which afterwards sold out to the old company. Nothing was left for the city to do but renew negotiations with the old company. The result was a most unfavourable contract, considering the monopoly given and the prices permitted.

The first period of ten years expired on 1st November, 1904, and no notice of expropriation was given to the company, so that the contract will remain in force up to 1910.

During the existence of the contract no person or company can lay pipes in any of the streets and lanes of the city, not even for the sole purpose of furnishing gas after the expiration of the contract. Such monopoly clause should be declared illegal by the Legislature.

Electric Light

The contract for the electric lighting of the city has been let to the Royal Electric Company for a period of five years, beginning in 1904, at the rate, for all night service, of $60 per year per arc lamp of not less than 484 watts power. The price paid before to the same company was $120, but for a much stronger light. No provision was made in the contract for maximum charges to citizens, as in the case of gas. But in a contract lately offered by the council to the company, an exclusive privilege was first offered for gas and electricity not only for public but for private purposes, but the protests were so numerous and vehement that the clause was withdrawn. The new contract has been for the very long period of 23 years.

Conduits

Related to electric lighting is the question of under-ground conduits. Their construction is being forcibly urged on the grounds of public safety and the appearance of the streets. The solution of the problem is not easy. The following desiderata appear incontestible:

1. There should be one conduit for the low, and one conduit for the high tension wires, common to all the companies, what-

ever may be their statutory power to construct separate and private conduits for their own use. This would not be infringing upon vested rights, but simply regulating them, as the highest court of the United States has decided in the New York cases:

"The scheme of these statutes was not to annul or destroy the contract rights of such companies, but to regulate and control their exercise. They did not purpose to deny them any privilege theretofore granted, but they did require that they should be exercised with due regard to the claims of others, and in such a way that should cease to constitute a public nuisance and should be enjoyed in such a manner as to inconvenience and endanger the general public as little as possible." (Ruger, C.J., *The People* v. *The New York Electric Lines*).

2. All connections should also be under-ground. No half measure should be allowed.

3. The city should own and operate the conduits, which should be constructed so as to give the most improved and equal facilities at fair rates to all existing companies and provide accommodation for all probable competitors in the future.

Acting upon these principles, the city applied to the Legislature for the necessary powers, but its demands were refused.

In the proposed agreement, which was before the council a few months ago, the company contracting for the gas and electric franchises would have had to put all wires underground in private conduits, and remove all poles. Lately competition has come from an unexpected quarter. Even if it is not a full and free competition it will be strong enough to afford relief to many. Numerous parties producing electricity for their own use have begun to distribute their surplus to their immediate neighbours, and they are now asking permission to cross one or more streets by underground conduits in order to increase their sale; their wires outside of the conduit being stretched along private properties.

Telephones

Two telephone companies are operating in Montreal, but without any municipal franchise. The rates of the Bell Company, by far the largest of the two, are $30 for residence and $50 for business telephones. The Merchant's Company charges $25 for either residence or business telephone. The general consensus of opinion is that two telephone companies are a nuisance.

Abattoirs

Another franchise constituting a direct monopoly for the sale of cattle and a practical monopoly for their slaughtering was created in 1881 and 1885. In 1881 the slaughtering houses were in such number within the city limits that they constituted a menace to the public health, and as it seemed impossible properly to regulate them, their abolition was decided upon (by-law no. 129) as soon as public abattoirs were established. No abattoir, however, could be recognized as a public abattoir unless built outside and yet within three miles of the city limits. A company then built two abattoirs at either end of the city. The steady opposition of the butchers made the enterprise a failure, and the properties were sold first to the city and then transferred to another company with the consent of the Legislative Assembly (48 Vict., ch. 67), the city promising to enforce rigorously the by-law of 1881 and agreeing not to allow the cattle to be sold outside of the market which was to be established at each abattoir. In 1903 the company waived part of its rights, which were transferred to another company for a period of 26 years.

At the last session of the Quebec Legislature it was enacted, as an outcome of the proposed gas and electric contract, that all franchises granted for a longer period than ten years should be first submitted for the approval of the people.

Extensions of the City's Boundaries

The surrounding municipalities, at least most of them, have disposed of their local franchises. Water supply, gas, electricity and tramways have been assigned to companies with exclusive rights for periods running between 25 and 50 years. The granting of these franchises with a view only to the present needs of those municipalities will most probably prove a serious obstacle in the near future to the advancement of Montreal, when these municipalities, voluntarily or not, join the city proper. To improve a service which will then be inadequate, to make it uniform with the ordinary service of the city, new concessions, new contracts, new extensions will be necessary, and thus monopolies may become more and more troublesome.

The annexation of all the suburbs has become one of the most difficult problems of the municipal life of Montreal. With few

exceptions these municipalities are plunging into debt, in some cases even borrowing from year to year money to pay the costs of their ordinary administration. They make improvements with little serious regard for the future, give liberal bonuses to manufacturing concerns, grant to others tax exemptions, expecting that Montreal will finally pay these heavy obligations while they will enjoy the benefit accruing from the neighbourhood of large industries. When their taxes are about to be raised to the Montreal level and their credit is exhausted, they apply for annexation, and Montreal cannot but take them in.

General Considerations

Montreal, with 34,966 inhabitants of English origin, 37,077 Irish, 18,108 Scotch, 163,034 French, 2,911 Germans, 1,633 Italians, 4,932 Jews; with 202,091 Catholics and 53,595 Protestants; with the French living principally in one part of the city, the English in another, and the Irish in another; with enough of each nationality in each ward to keep the balance of power and to materially affect the result of the elections; with most of the industrial capital belonging to the minority, the labouring forces to the majority, Montreal occupies certainly a unique position. The following words of Professor Edward J. James, in an address before the National Conference for good city government in Minneapolis, in 1894, are here particularly apt: "The mixture of many nationalities, the lack of homogeneousness in the population has made the problem of city government infinitely more difficult than it otherwise would have been. You may take good elements from half a dozen different populations, throw them together into one political community, and immediately a new set of difficulties in the government of that community will arise from lack of homogeneity of political ideas and of intellectual sympathies." These conditions exist in Montreal, and explain many otherwise incomprehensible phases of its annals. Traces of nationalism are found everywhere, in the charter, in committees, in the distribution of patronage, in general administration, in the press, coming unsuspectedly to the surface and again disappearing under the influence of tolerance and tact. In the charter the wards are not specially classified as French, English, Irish or mixed, but their boundaries

were fixed so as to arrive *de facto* at this very classification, and no change would be permitted which could materially affect the racial character of the representation. More than that, as the English or French minority in some wards was sufficiently strong to elect one of the two aldermen by combining their votes on one person, cumulative voting was specifically prevented. The charter provides that the minutes of the council must be written in both French and English. Half of the civic assessors must by law be Catholic, the other half Protestant. On the committees it is conceded that all must have French majorities; that certain chairmanships must be French, such as those of the committees on finance and roads; that the minority must be represented on all the committees and on certain ones, as in that on finance, by three members; that the Irish must either have a chairmanship or a seat in the roads department.

As regards patronage, the chiefs of certain departments must be French, others English. Their assistants are also appointed with a view to perpetuating this representation or to reversing it, if in certain quarters it is found unjust. The number of appointments to be given to each nationality is sometimes mathematically fixed in certain committees, for the police and the fire brigade, for example, one-third English, two-thirds French.

Differences of opinion will also happen which can be explained only by the particular genius and training of each nationality. But votes are often given in council and in committee strictly on racial lines for which no excuse can be offered.

An occasional source of friction results from the fact that the majority of the French reside in the eastern section of the city and of the English in the western, and nationality becomes identified with a locality. Whenever it is thought that a district does not get what is considered a fair share of the improvements, the inhabitants sometimes see in that evidence of ill-will against their nationality. All civic employees are supposed to speak both languages sufficiently for the special purposes of their occupation. Addresses to royal or political personages are read in both languages, and the answer thereto is expected to be in both.

During the years 1840, 1841 and 1842 the council was composed of 11 English-speaking and 7 French-speaking aldermen.

In 1843 and 1844 the proportion was 9 English and 8 French. In 1845 a redistribution of the wards was made, the French representation fell to 5 and the English rose to 12. In 1881 the proportion was 15 English and 12 French. In 1882 one French alderman was elected in the centre ward hitherto represented by English aldermen. The fight was memorable in that this change was followed next year by the election of another French alderman in the same ward. Since that time the French have been in a majority that has been considerably increased by annexations.

Instances of federal interference with local government have happily been few and have been restricted to telephones and tramways. The danger of such interference has been pointed out when discussing the street railway problem. Interference at the hands of the province with most unfortunate results has been very noticeable. In fact the financial crisis through which the city has passed and the burdensome clauses of the franchise compacts can be traced directly to provincial legislation. The Legislature has practically disposed of the local franchises, as well as taken into its own hands the administration proper of the city by ordering the municipal council to widen or extend streets or do certain other municipal work. It would appear as if a better feeling is growing in Quebec as well as a healthier conception of provincial powers and municipal rights.

Ratio of Certain Yearly Ordinary Expenses to the Total Yearly Ordinary Expenses

	1902	1906	
Interest	33.42	28.16	per cent.
Schools	10.41	14.14	"
City Clerk and staff	0.37	0.29	"
Law office, permanent salaries and general administration	0.54	0.55	"
Assessment office, including voters' list	0.72	0.69	"
Collection of revenue	3.88	1.10	"
Roads, no permanent works	11.80	14.80	"
Police	8.75	9.20	"
Fire	6.01	7.38	"
Lighting	3.98	2.71	"
Water-works	4.21	4.58	"
Markets	0.71	0.68	"
Removal of garbage and incineration	2.70	2.19	"
Hygiene	1.31	1.78	"
Parks	1.10	1.13	"

Bonded Debt

Year.	Bonded debt.	Assessed valuation of taxable property.	Ratio of bonded debt to assessed valuation.	Annual revenue.	Ratio of interest to revenue.
1868	$ 5,000,000	$ 45,453,920	11 %	$ 778,288	37.5 %
1888	12,877,929	90,324,615	14⅓ %	2,095,411	24.2 %
1899	27,000,000	149,248,485	18 %	3,004,728	32.22%
1905	28,469,100[1]	172,630,245	16 %	4,140,562	33.6 %

Increase in revenue from 1868 to 1905 ..... 432 %
Increase in the debt from 1868 to 1905..... 467 %
Increase in the assessed value from 1868 to 1905..... 279 %

Statement Showing the Amount of Assessment for Immovable, Business and Water Taxes, and Percentage of Increase

Year.	Immovable tax assessment.	Increase on previous year.	Business tax assessment.	Increase on previous year.	Water tax assessment.	Increase on previous year.
1885	$ 888,124		$194,134			
1890	1,210,946	36%	246,049	21%	$870,730	
1895	1,697,565	40%	281,089	14%	915,176	5%
1900	1,816,710	6%	287,266	3%	924,000	0.97%
1905	2,251,049	23%	365,731	27%	958,549	0.81%

Immovable tax: increase from 1885 to 1905 .....153%
Business Tax: " " " " 89%
Water tax: " " " " 8%

Ratio of the Revenue from the Three Principal Taxes to the General Revenue

Year.	Real estate tax.	Business tax.	Water tax.
1895	59%	9%	23%
1900	56%	8%	22%
1905	55%	8%	21%

[1] The latest issues bear interest at from 3 to 4 per cent.

CITY GOVERNMENT IN OTTAWA

BY

FREDERICK COOK

CITY GOVERNMENT IN OTTAWA

Half a century ago the question of the seat of government of the united Canadas was one of the paramount political issues, and for nearly a decade it remained one of the principal topics of public discussion. It will be recalled that the Act of Union of 1840 which united Upper and Lower Canada empowered "the governor of the Province of Canada for the time being to fix such place or places within any part of the Province of Canada and such times for holding the first and every other session of the Legislative Council and Assembly of the said Province." Kingston, which was selected as the first place of meeting,[1] was replaced in 1843 by Montreal. Because of the Montreal riots of 1849, Parliament assembled thereafter alternately at Toronto and Quebec.[2] Finally, in 1857, by resolution[3] the selection of a permanent site was placed in the hands of Her late Majesty Queen Victoria, the mayors of Ottawa (then known as Bytown),[4] Toronto, Kingston, Montreal and Quebec being invited to present a memorial of the advantages which their respective constituencies might offer as the permanent seat of government. Though Her Majesty's selection of Bytown became known early in 1858[5] the Canadian legislature did not formally acquiesce for another year.[6] The advantages of the site selected became more apparent as time passed. At a safe distance inland, on the borders of the two provinces of Upper and Lower Canada, and on a picturesque site at the junction of the Rideau canal and the Ottawa river, the selection has proved to be wise. Bytown, which was incorporated in 1847, was re-incorporated as the city of Ottawa on Jan. 1st, 1855, when rail connection had been opened with the St. Lawrence. Parliament met for the first time there in June, 1866. The population of the city in 1857 was 7,760; in 1867, 18,700; in 1907, 69,756.[7]

[1] Journals Legislative Assembly, 1843, pp. 88-90. The motion was presented by Attorneys-General Baldwin and Lafontaine.

[2] Bourinot, in his "Canada under British Rule," p. 189, says: "The Legislature met alternately at Toronto and Quebec every five years." This is not borne out by the Journals of the Legislative Assembly. The statement should be "every four years."

[3] Journals Legislative Assembly, pp. 133, 185.

[4] Ottawa *Tribune*, April 16th, 1857. There are no minutes extant of the early city councils.

[5] Communicated to the Legislative Assembly by Sir Edmund Head, March 16th, 1858. Journals Legislative Assembly, p. 139.

[6] Journals Legislative Assembly, 1859, p. 10.

[7] From return to City Council by Assessment Department.

Municipal Organization

The city was originally divided into five wards with two aldermen and two councillors for each. From the year of Confederation the title of councillor was dropped, and the wards have since been each represented by three aldermen elected yearly. The annexation of outlying municipalities occasioned the re-distribution of the boundaries of the existing wards in 1890, and the creation of three additional wards, making eight in all. The present area of the city is 3,365 acres.

In the days of Bytown, and in the early years of Ottawa, the mayor was selected by the members of the council. He is now chosen, as in other Ontario cities, by the direct vote of the electors. It is customary to re-elect him if his first year's administration has been acceptable; and three-year terms have not been infrequent. In 1903 his honorarium was increased from $1,000 to $2,500 a year. The aldermen are not paid, but at the last municipal elections the electorate pronounced in favour of the establishment of a Board of Control, and the reduction of the number of aldermen in each ward to two. Under these circumstances provision is made in the municipal Act to pay the controllers an annual fee not exceeding $400 each.

There are seven standing committees of the council, viz., Finance, Board of Works, Waterworks, Fire and Light, Property, Board of Health, and Public Library. The first five consist of one alderman from each ward. The Board of Health is constituted under the provisions of the Ontario Health Act. The Public Library Board, by special Act of the Legislature, is composed of the mayor, eight aldermen, and three citizens, not members of the city council. Its constitution is a departure from the practice in other Ontario cities; though the change cannot be commended as against the general plan laid down in the Ontario Public Libraries Act.

The indeterminate relations of the city and the federal authority are a source of frequent trouble. For example, there are two police forces, the Dominion police, whose duty it is to protect the parliament and departmental buildings, and the city police proper. When joint federal and civic interests are involved the two organizations work in harmony, but the situa-

tion is anomalous. Parliament is a law unto itself; it holds that on federal property its members are superior to provincial and municipal supervision. The federal force is an adjunct of the Department of Justice; the city force is governed by the customary police commission, the county judge, the police magistrate and the mayor, as provided by the municipal Act. Repeated efforts have been made by the council to secure direct administration and control of the city police, but the Ontario Legislature has steadily rejected the request.

Water Supply

The present waterworks system developed out of plans submitted by Mr. T. C. Keefer, C.E., in 1859. Works as then proposed were to cost not more than $300,000 and were to utilize the water power of the Chaudière Falls in the Ottawa river above the city. Definite action was taken only in the year 1871, a board of five water commissioners being appointed in the year following to take charge. By 1876 some $914,000 had been expended. In 1879 (May 1st) management by the board gave way to control by a committee of the council. Since then the plant has continued to develop until over $1,600,000 has been expended to date on capital account. The system is that of direct supply, the water being pumped without any intervening reservoir. The in-take for the supply of water is situated some 3,000 feet above the Chaudière Falls, so that an unlimited supply of pure water is assured.[1]

Lighting

The city operates its own lighting plant, in active opposition to a private enterprise. That Ottawa was allowed to enter the field in competition with a private company is explained by the fact that in 1894, years before the Conmee Act which governs such matters in Ontario, the city secured authority to expend $250,000 in the establishment of a lighting plant. Although an exceptional situation, the action of the municipality, under the circumstances, may be independently justified, as it prevented the consummation of a monopoly of the lighting business of the city

[1] The early history of the Ottawa waterworks is taken from an able report by T. C. Keefer, C.E., C.M.G. Later figures from City Engineer's report, 1906.

in the hands of the Ottawa Electric Company, and saved probably $150,000 or $200,000 annually to the users of electric light.

It was in 1905 that the municipality took over the plant of the then junior lighting concern, the Consumers' Company. The two companies, the Ottawa and the Consumers', ever since the incorporation of the latter in 1901, had been engaged in a war of rates, by which the householder benefited. Early in the year 1905 there were indications that the two companies were coming together; that the greater was about to absorb the lesser. Legislation was submitted to the Dominion Parliament to enable the Ottawa Electric Company to secure the property and franchises of any existing company, and, in spite of the protests of the city corporation, the bill passed the House of Commons. The city council thereupon decided to take advantage of a clause in the charter which it had given to the Consumers' Company, by acquiring the plant of that company, the purchase price being fixed at $200,000.

The property of the Consumers' Company accordingly passed into the hands of the city on May 17th, 1905, and its operations have since been fairly successful. Up to May 31st, 1906 (ten and a half months) under municipal management, the receipts were $47,828 and the expenditure $47,002, leaving a net profit, after paying interest and sinking fund charges, of $826. For the succeeding six months ending 30th November, 1906, there was a deficit of $2,659, which is explained by that period including three months of the year during which there is the lowest consumption of electric light. For the half year, ending 31st May, 1907, the receipts were $41,827, expenditure, $34,776, net profit $7,050.[1]

Since the city took possession of the Consumers' plant the business has greatly increased. On July 17th, 1905, there were 1,314 customers; on November 30th, 1906 ,the number was 2,173; on May 31st, 1907, the total was 2,395. The number of incandescent lights for the same period had gone up from 28,160 to 46,730. The amount of business done by the civic lighting plant is, however, far behind that of the Ottawa Electric Company, which reports 9,031 customers, 155,000

[1] From reports of Municipal Light Commission to City Council, 1905-6-7.

incandescent and 1,378 arc lamps in use.[1] Both the city and the company charge the same rate, 12 cents for 1,000 watt hours, with a discount of forty per cent. for prompt payment. The city makes the rate and the company meets it. Meanwhile poles and lines are being duplicated along the streets and in every section of the municipality, to the disfigurement of the city.

The Street Railway

The genesis of the present effective street railway service in Ottawa dates back to 1866, when a number of citizens were incorporated as the Ottawa City Passenger (tram) Railway Company, and a single line of track was constructed from New Edinburgh to the Chaudière Falls. For nearly twenty-five years this was the only line in operation. In the early nineties came the movement for an electric road and the organization of the Ottawa Electric Railway Company.

The new railway was opened in June, 1891, and two years later came amalgamation with the City Passenger Railway. A new arrangement was then made with the city. In return for surrendering the perpetual franchise in the old tramway company a thirty years' franchise was given to the Electric Railway Company, terminable on August 13th, 1923. At the end of the thirty years the corporation may, on six months' previous notice, take over the railway, the purchase price to be determined by arbitration. At the time of writing the street railway mileage is 29.19 miles. The company pays the city annually $450 per mile of street occupied by its tracks, for the first fifteen years of its franchise, and $500 per mile per annum for the second period of fifteen years. On permanently paved streets it pays $1,000 per mile per annum for traffic on such streets. Last year, under this heading, its payments to the city corporation amounted to $11,131. During the winter the company has to remove the snow from all tracked streets from curb to curb, but leaving a sufficient quantity to furnish good sleighing, as may be stipulated by the city engineer. The railway, well managed and effectively administered, has been a marked success. The number of passengers carried during the first complete year of

[1] Figures furnished by the Secretary of the Ottawa Electric Company.

operation ending May 31st, 1893, was 2,394,504; the gross receipts were $110,071, with net profits of $39,850. For the year ending December 31st, 1906, the number of passengers carried was 11,408,422, with gross receipts of $525,746, and net profits of $180,684.

In 1904 the company was approached by the council to state upon what terms it would surrender the franchise given in 1893, and turn over its property to the citizens. The capital stock of the company is $1,000,000, with first mortgage bonds outstanding of $500,000. The answer of the company was—" That if an offer of $250 per share for the capital stock of the company is made by the city subject to ratification by by-law and legislation, the board of this company will agree to recommend to the shareholders the acceptance of the offer, payment to be made in city of Ottawa four per cent. bonds." With the mortgage indebtedness of $500,000, this meant that the city would have to pay $3,000,000 for the franchise and properties of the company. At the January elections in 1905 a plebiscite was taken on the question. Not more than forty per cent. of the qualified electors voted, 819 voting yea, and 3,497 nay. A favourable opportunity of acquiring the most valuable franchise in the city was thus let pass. On the basis of the business done by the company in 1906 and assuming that the same efficient management had been maintained under municipal control, the city would have been able to pay off its interest charges, amounting to $120,000, and make a clear profit on the year's transactions of $91,815. As it was, the company paid a dividend to its stockholders equal to twelve per cent., and had a balance at profit and loss on December 31st, 1906, of $199,564. It may safely be surmised that the company will not repeat its offer, as the business of the railway is advancing by leaps and bounds. The company, it may be added, was the first electric railway company on the continent to solve the problem of heating cars in winter, by utilizing electricity.

The Gas Company

Ottawa was the first city in Canada, and one of the first on the continent, to adopt electricity for street lighting purposes; it was also among the first to utilize gas. The Bytown Consumers

Gas Company was organized in April, 1854, and the works were in operation within a year. In 1865 the name of the company was changed to the Ottawa Gas Company. Its business was materially cut into by the electric lighting companies. In 1892-3 the Imperial Continental Gas Association of London acquired a controlling interest and developed a more active business policy. New gas holders were erected and miles of new mains laid. In 1893 there were only 775 consumers of gas in the city; there are now over 4,000. Not five per cent. of the 775 consumers used gas for fuel purposes. To-day not more than twenty per cent. of the 4,000 consumers use gas for lighting. Realizing the difficulty of competing against electricity as an illuminant the company has made a special effort to dispose of its product for cooking purposes, and in this respect has been eminently successful. Recently (1906) it has sold its control to the Ottawa Electric Company, and in 1907 the consolidation of these two important concerns was carried out.

Civic Finance

The total civic revenue for 1906 was $630,742; the expenditure $27,827 less. The city's debt stands at $7,421,907, sinking funds at $2,622,004, other property bringing the total assets up to $6,094,504. The general tax rate was 14 mills on the dollar, a collegiate institute rate of 6-10 mills, a public school rate of 6 mills, and a separate school rate of 8½ mills.

In 1878 the Legislature permitted the city to renew its bonded indebtedness for a period of twenty years, but limited future taxation for general purposes to fifteen mills on the dollar. This arrangement was unfortunate, as the city is now paying a higher rate of interest on the renewed debentures than would have been the case had they been retired in the usual course. The city's debentures carry interest at from six to three and a half per cent., the average rate paid to-day being slightly over four per cent. As an indication of the standing of Ottawa's debentures it may be mentioned that on the last call for tenders for $326,000, in 1905, a premium of 70 cents and accrued interest was obtained for four per cents.

Of the eight largest cities in Canada the following figures show that Ottawa has the smallest net debt per head of popula-

tion, and the smallest debt in proportion to assessment, except Winnipeg. The figures are as follows:[1]

	Net debt per head.	Net debt to assessment.
Ottawa	*$30 05*	*5 76* per cent.
Kingston	32 10	7 52 "
Sherbrooke	34 74	9 17 "
Chatham	35 77	7 90 "
Sydney, C.B.	36 54	9 13 "
Winnipeg	39 83	5 17 "
Toronto	41 13	6 89 "
St. John, N.B.	41 64	8 12 "
Vancouver	42 15	7 48 "
Hamilton	42 35	8 37 "
Belleville	50 02	11 97 "
Halifax	54 42	8 86 "
St. Catharines	61 50	12 79 "
Montreal	64 43	11 84 "
Victoria	66 31	11 56 "
Quebec	94 36	33 88 "

Tax Exemptions

One of the serious problems with which the city has to grapple is that of tax exemptions. In no other Canadian city, in proportion to wealth and population, is there such a large amount of property exempt. The latest (1907) exemption returns are as follows:[2]

Churches	$ 1,318,525
Charitable institutions	605,050
Educational institutions	1,584,750
Miscellaneous	217,750
Federal property	11,349,300
City property	3,014,925
Total exemption, realty	$18,090,300

In addition there is at least one million dollars of Civil Service income not subject to civic taxation, or a grand total exemption of $19,090,300. With this is to be compared a total taxable assessment of only $41,318,150 in 1907, and $43,354,450 for 1908.

[1] Figures from "Municipal Debts Statistics, Canada," published by John Mackay & Co., Toronto, December, 1906. Of the eight largest cities in Canada it will be seen that Ottawa has by far the smallest net debt per head in proportion to assessment except one city—Winnipeg.

[2] Assessment Commissioner's report, 1906.

It should be explained that in recent years the rapid development of governmental business has compelled the federal government to rent a large number of buildings in different portions of the city, a process which immediately reduces civic revenue. According to a statement presented to the House of Commons in 1906 the federal authorities were occupying eighteen separate buildings rented from private owners, upon which no taxes were being paid, involving a loss in taxation to the city of between $7,000 and $8,000 yearly. Protests by the city council have resulted in a promise that in all new leases of buildings for governmental purposes it would be stipulated that the owner of the building must pay the taxes to the city. Thus far the promise has been fulfilled only in part. As regards school assessments the division between the two school boards for 1907 is on the following basis:—

Public school assessment	$31,490,120
Separate school assessment	9,828,030
Total	$41,318,150

Although the Roman Catholic school population is larger than the Protestant the assessment of separate school supporters is less than one-third that of the public school supporters. Separate school supporters have accordingly to pay a higher rate. Thus the rate of taxation for separate school supporters for 1907 is $23.10 on each $1,000 assessment as against $20.60 for public school supporters. The number of children in the two classes of schools does not differ materially; thus in 1906 the number of children between the ages of five and twenty-one in the public schools was 9,160 against 9,216 in the separate schools. There are in all eighteen public and twenty-five separate school buildings. To the support of the Collegiate Institute all assessable property contributes, the rate for 1907 being three-fifths of a mill on the dollar.

Local Improvement Taxes

The federal authorities have so far declined to be responsible for local improvement rates except in special cases. They, however, maintain the canal bridge and the suspension bridge over the Ottawa. Refusal to contribute regularly to

local rates works out still more unfairly when the federal government purchases private property. Even if the government continues for a time the private leases the taxes formerly falling on the property must now be met by the general ratepayers.

The City and the Civil Service

Civil servants in Ottawa have the right to vote in municipal, provincial and federal elections. One class of civil servants alone is debarred from the provincial franchise, viz., "officers employed in the collection of duties payable to His Majesty in the nature of duties of excise." The point has frequently been raised that the disqualification refers only to the officers of the local Inland Revenue office, but the staff of the inside division of the Department, in order to avoid the penalties imposed by the Ontario Elections Act, carefully abstain from voting. The belief is gaining ground in Ottawa that where party politics are at issue (they do not play a part as yet in municipal affairs) it would be better if all civil servants, federal and provincial, were cut away altogether from the danger which they run of offending one political party or the other. As it is, probably not more than thirty per cent. of civil servants living in Ottawa exercise their federal and provincial franchises; but they take a more active part in purely municipal matters. The question whether the income of a civil servant is assessable or not was settled by the courts nearly thirty years ago, when it was decided that civil servants' salaries were exempt.[1]

The Improvement Commission and Its Work

In 1893 Sir Wilfrid (then Mr.) Laurier, in reply to an address presented to him by the Ottawa Reform Association, remarked that "when the day comes, as it will come by and by, it shall be my pleasure and that of my colleagues, I am sure, to make the city of Ottawa the centre of the intellectual development of this country and the Washington of the north."[2] This is the first reference made by the present First Minister of the

[1] For the judgment of the court see Cartwright's cases under the B. N. A. Act, vol. I., pp. 592-675.

[2] Toronto *Globe*, June 20th, 1893.

Crown to Ottawa as "the Washington of the north." On assuming the reins of office in 1896 he reaffirmed his previous statements regarding the improvement of Ottawa,[1] and the city council lost no time in furthering the cause. A special committee was appointed to prepare the city's case for submission to the government. In the year following (1897) a memorial was submitted to the Governor-General-in-council, setting forth the large expenditures made by the municipal corporation on public works and undertakings for the safety and convenience of the public and for the protection of federal property. Attention was also called to the large amount of federal property exempt from taxation. An estimate was made showing that on the ordinary basis of civic taxation this exempt property would yield an annual revenue for school and municipal purposes of at least $300,000. The large expenditures on fire appliances and water supply, largely for the more efficient protection of government property, were referred to. It was pointed out, further, that for water supplied to the parliament and departmental buildings, the Governor's residence and the experimental farm, the city received only $14,700 per annum, whereas if the government property contributed at regular rates for all the water furnished, the city would be entitled to receive $45,000, exclusive of that for the experimental farm. Reference was made finally to the large contributions by the governments of Great Britain, the British colonies and France towards the expenses of municipal government. After setting forth these facts the memorial went on to say as follows: "Your petitioners beg respectfully to represent that they are entitled to and should receive from the Dominion some assistance adequate to the value of the services rendered, and would respectfully represent that such assistance should be in the form of a fixed annual grant, in return for which the city will undertake to furnish an adequate water supply and provide efficient fire protection to all government property, and such other services as may be agreed on." It was suggested that the annual grant should be at least $50,000, and that, in addition, the government should maintain and control the local police force. In 1899 the federal Parliament passed "An Act Respect-

[1] Toronto *Globe*, August 6th, 1896.

ing the City of Ottawa,"[1] creating "The Ottawa Improvement Commission," with the following powers:

(*a*) To purchase, acquire and hold real property in the city of Ottawa, or in the vicinity thereof, for the purpose of public parks, or squares, avenues, drives or thoroughfares;

(*b*) To do, perform and execute all necessary or proper acts or things for the purpose of preparing, building, improving, repairing and maintaining all or any of such works for public use;

(*c*) To co-operate with the Corporation, or with the Board of Park Management of the City of Ottawa, in the improvement and beautifying of the said city, or the vicinity thereof, by the acquisition, maintenance and improvement of public parks, squares, streets, avenues, drives or thoroughfares, and the erection of public buildings in the said city or in the vicinity thereof.

An appropriation of $60,000 a year for ten years was voted, but no action was taken by the Government with reference to assuming the police control of the city.

The commission at first consisted of four members, three appointed by the Governor-in-council to hold office during pleasure, and one appointed by the corporation of the city of Ottawa. In the latter case, the mayor has invariably been the representative of the municipal corporation. In 1902 the number of commissioners was increased to eight. The office of commissioner is an honorary one, the only paid position being that of secretary.

The commission has done much to improve the city. A series of driveways with boulevards, parks and bridges has already been laid out, and in co-operation with the city several old thoroughfares have been repaired and improved. The federal government has also converted some of its reserve lands into parks. Agreements have also been entered into with the city to take over and maintain certain parks for definite periods. The recommendations made to the commission by its landscape architect (Mr. Todd) include the reservation of suburban parks, driveways and bathing places, as also of a forest park, but steps have not yet been taken to complete the latter.

[1] Statutes of Canada, 1899, chap. 10.

In 1903 the Act constituting the commission was amended by extending to 1919 the time for the payment of the annual grant of $60,000, and empowering the commission to borrow, on debentures bearing interest at a rate not exceeding 4 per cent., a sum not exceeding $250,000, to purchase land or carry out any scheme of improvement requiring a larger outlay than is available out of the annual income of the commission. The amending Act provides that the debentures are to be redeemed in equal annual instalments. Sixteen debentures of $21,455 each were accordingly issued, the first to mature on June 30th, 1904, and one each year afterward, the last being redeemable on June 30th, 1919. The debentures were deposited in the Finance Department, to be taken out and used as required. The total expenditure of the commission to June 30th, 1906, was $631,547.[1]

The æsthetic gain to the city has been most marked, but the city's contribution has also been substantial. Apart from federal exemption from local taxation of all kinds the city must also furnish, during the operation of the park commission, all water required by the government as well as by the Commission free of charge. The agreement made in 1899 reads in part as follows:—

"The corporation shall at all times, while such annual grant is paid, as provided in the said Act, furnish an adequate and sufficient supply of water for use in and on all buildings, lands and premises in the said city of Ottawa, now owned, rented, leased or occupied, or to be hereafter owned, leased or occupied, by the said government, and also for use in and on Rideau Hall grounds, and the Central Experimental farm and buildings thereon, and for use in and on all other buildings, lands and premises in the vicinity of the said city now or hereafter to be owned, rented, leased or occupied by the said government, and shall provide for the sprinkling of the streets in the front of such buildings, lands and premises, including the bridges in the said city of Ottawa, maintained by the said government."[2]

The immediate result was to cut off some $15,000 of civic

[1] From report on the work of the Ottawa Improvement Commission, December 21st, 1899, to June 30th, 1906, presented to Parliament.

[2] By-law No. 1956 of the corporation of Ottawa, passed October 2nd, 1899.

water revenue until then paid by the government. In this connection it is to be pointed out that this $15,000 was a special rate. Had the government been charged ordinary rates its water bill would have been about $50,000. Taken with the growing exemption of property through federal purchases and the increasing expenditures of the municipality, it led the city council in 1901 to present a memorial to the Dominion Cabinet for some measure of financial assistance. No action has as yet been taken. It was possibly these financially unsatisfactory relations that led many to cast their votes at the recent municipal election in favor of Ottawa being made like Washington into a federal district governed by a commission. It is significant that although the local press was largely opposed to the idea the plebiscite gave 3,630 for, and 4,431 against. The day may not be far distant when the figures will be reversed.[1]

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[1] Area of Ottawa		3,365 acres
Population		67,572
Mileage of streets		101
" asphalt and stone set pavement	6.96	
" bitulithic	.62	
" tar macadam	2.63	
Total mileage of permanent pavements		10.21
Mileage of water mains		110.
" concrete walks		124.
" sewers		76.
" street railway tracks		29.19
" railway tracks in suburbs		17.45
" roadway occupied by street railway tracks		13.99
Number of steam railways entering city		7
Area of parks in city		237.3 acres
Value of property owned by city		$ 3,014,920
" government property exempt from taxation		11,349,300
" other property " " "		3,726,075
" taxable property		41,318,150
" buildings erected in 1906		1,728,975

PRESENT CONDITIONS

BY

S. MORLEY WICKETT, PH.D.

SOMETIME LECTURER IN POLITICAL ECONOMY IN THE UNIVERSITY OF TORONTO

PRESENT CONDITIONS

It is evident that the opening up and settlement of a country must bring an increasing number of delicate and intricate problems of government. Every part of the body politic is affected. In Canada, for example, the division of powers among the central government, provinces and municipalities is still unsettled and in process of working out. This development of municipal government may be called the rounding out of federation, the placing of responsibility in quarters where interest is direct. In this process the municipality is bulking more and more largely in the field of Canadian public life.

There seems to be some difference of opinion as to the sources of local powers. Thus a number of students of municipal government in the United States have pressed the argument that the mere fact of people congregating in organized groups carries with it an implication of sovereign powers of self-government spontaneously arising based on self-interest. But the argument can mean little more than a plea to the legislatures for a wider margin of implied local powers. Hence we need have in mind only such powers as are definitely given by provincial or by federal statute.

Just what are the limits in Canada to legislation by the federal Parliament on subjects affecting municipalities is at present impossible to say. That body deals with matters affecting public order and safety, such as the militia. Co-ordinately with the provinces it regulates the retail liquor traffic (Canada Temperance Act, 1878). It controls "public harbours."[1] It has supervision over railways, telegraphs, and other works extending beyond the limits of one province, or such works as it vaguely declares are "for the general advantage of Canada." Under the head of regulation of trade and commerce it has a measure of jurisdiction over telephone, electric light and power companies.[2] This is possibly to some extent by way of analogy with

[1] What looks like an anachronism is the harbour of St. John, N.B., which the courts have held not to be a "public harbour" within section 108 of the B.N.A. Act, and is accordingly vested in the municipality. All other harbours of importance are under federal jurisdiction.

[2] The railway Acts of 1883 and 1888 laid it down that any branch line which connected with or crossed a railway declared to be for the general advantage of Canada should itself be deemed to be a work for the general advantage of Canada. The effect was that street railways or other railways using the highways passed from municipal and

the clause affecting railways, telegraph companies, etc. In one instance (Ottawa) the local street railway has powers from both federal and provincial authorities.

So the problem of distinguishing provincial (and municipal) as against federal interests bristles with difficulties; but a serious attempt to arrive at a working basis is desirable. Thus at the time of writing the Supreme Court of Canada is actually considering the argument that provincial corporations cannot legally transact business beyond the boundaries of the province.[1] Moreover, by reason of inter-local consolidation the control of local transportation and related enterprises is threatening to pass from municipal, if not from provincial, hands. It is a novel situation, full of possibilities alike to the financier and to the constitutional lawyer. Whatever the outcome as regards provincial powers, the provinces can never be completely ousted. Their hands will always control the immense leverage that comes with powers of police and of local taxation.

Somewhat similarly the relations of province and municipality are still being shaped. The view has long prevailed that in fixing the federal subsidies to the provinces the fathers of Confederation were intending to make direct provincial taxation unnecessary. Be that as it may, provincial expenditures have expanded greatly and provincial treasuries have had to contrive a variety of local measures of relief. Although these vary in time and character, they are of a class, and may be grouped into typical processes: (1) Certain responsibilities have been transferred from province to municipality, such as the preparation of voters' lists. (2) Certain revenues, such as legal fees, formerly accruing to the municipality, have been appropriated in whole or in part by the province, as a result of the process of legal centralization, and others have been replaced by a provincial succession duty tax. (3) The province has been sharing in the revenue from liquor license fees, and in the taxa-

provincial control under the control of the railway committee of the privy council, and the value of the municipal franchises seemed to be seriously threatened. The Act of 1903, which is law to-day, declares local lines to be subject to federal control in respect only to connections or crossings, or to through traffic thereon, or anything appertaining thereto. This is one of the danger clauses now threatening municipal privileges for radial railways.

[1] It will be recalled that differing from the United States the provinces of Canada have only such powers as are expressly granted to them.

tion of corporations. But the province has been paying back indirectly in the form of grants for education, hospitals, asylums, public libraries and roads much more than it takes.

Nothing seems fixed, however. Municipal budgets are growing. In many cases local expansion is more in evidence than provincial. This fact the student of municipal government cannot disregard, for the relative rates of development may be expected to fix in many ways the future administrative relations between province and municipality. A recent example is the provision for the taxation of railways in Ontario. The province collects the tax but distributes one-half, less certain charges,[1] among the municipalities. Provincial control of municipalities, apart from measures concerning sanitation and others involving municipal debenture issues, is not as a rule close. Allowance is evidently made for the rough and ready business methods of small municipalities, and for the sturdy individualism of rural citizens, especially in cases involving additional expense to the local taxpayer. The reluctance to establish a system of provincial audit and failure to insist on adequate and prompt statistical returns will serve as illustrations.

Municipal budgets, as remarked above, are growing rapidly. The annual expenditure of Winnipeg already exceeds that of Manitoba; Montreal's that of the province of Quebec; and until the present year Toronto's that of the province of Ontario. The grand total of municipal debts already approaches 150 millions, which means that for every two millions of provincial debt (including guarantees) there are three millions of municipal and eight millions of federal indebtedness. Municipal debts in the province of Ontario stand at about 70 millions;[2] in Quebec at 38 millions; in Manitoba and in British Columbia at over 10 millions; in the Maritime Provinces at 15 millions. Fresh issues

[1] An appropriation for the expenses of a railway and municipal board and a small *per caput* charge (10c. per day), for municipal (non-paying) patients in provincial asylums. The latter deduction is an ingenious means of interesting municipalities in the character of the patients they send to the provincial institutions. At present many of these patients seem to be little more than harmless vagrants sent there to relieve the local poorhouse or jail.

[2] Latest available figures are for 1904 when the total was 68.2 millions, with 12.5 millions of sinking funds. Ontario is further liable for some 7 millions of guarantees (chiefly railways), as is Manitoba for some 16½ millions. The faulty classification of municipal statistics prevents any reliable estimate of assets (sinking funds, reproductive properties, etc.).

are being marketed constantly. During the three years 1904-6 sales of municipal debentures, as reported by one bond house, reached a total of $31,877,415, in addition to small issues taken up privately and $3,217,492 offered for sale but withdrawn to await a more favourable market, or altogether between thirty-five and thirty-six millions. With this is to be compared the total debenture issue by the various provinces for the same period of $20,698,087. Moreover the rapid development of the country is being accompanied by the organization each year of many new municipalities.

These figures are impressive. They suggest the part played by local government in our national life; and the rôle seems to be steadily widening, as it is in Europe and elsewhere in America. The services performed by a modern municipality certainly go beyond the dream of a comparatively few years ago: better roads and pavements, markets, water and sanitary services, elaborate municipal and educational buildings, libraries, electric railways, light and power, telephones, etc. Inter-municipal connections, moreover, are multiplying fast until for a number of purposes the modern municipality is already regarded as a link in a chain. Franchise-holding and franchise-seeking corporations recognize the new conditions, as is clear from their greater aggressiveness in securing, consolidating and exploiting local franchises in neighbouring localities.

Bearing in mind the piece-meal method of municipal legislative amendments it was to be anticipated that the rapid expansion of municipal activity would at least temporarily overtax municipal machinery. An organization framed for simpler conditions is not necessarily adapted to the present. Let us first refer to the relations with the provincial government, then to permanent municipal staffs, mayors, controllers, and councillors.

Relations with the Province (Local Government Boards, etc.).—The character of municipal government is necessarily shaped by its powers. As a provincial corporation it carries out the wishes of its shareholders (ratepayers, citizens, council) within the limits of its power, and in a second capacity it obeys the instructions of the provincial government. The instructions are to be found in the general municipal Act and in other Acts of a more specific nature. As a corporation it may sue and

be sued for what it does of its own free will; but for its actions in carrying out the instructions of the provincial legislature or government it is free from liability for tort. Decisions of the courts in cases involving municipal liability have made this dual character clear. For example, in matters of police and sanitation the municipality is carrying out provincial instructions. A layman might call the municipality under these circumstances a provincial agent, but the legal implications of the word agent lay it open to objection here. In establishing a fire brigade or in erecting a municipal building, etc., the municipality is alone responsible.[1]

It is the practice of courts to construe municipal powers strictly, as it does those of an ordinary corporation. As long as provincial supervision and control are exercised through the legislature and through formal Acts without a measure of elasticity being given to them by means of some form of local government board, this attitude seems not only advisable, but inevitable. But the municipality is more than a corporation. In so far as it looks after purely local needs there is much in favour of its claim to freedom of action, and to this extent to the grant of a wider range of powers. As it is, municipal powers in Canada are at present enumerated in as great detail as in the United States, in much greater detail than in England where an efficient local government board exists, and in still greater detail than on the continent of Europe, where administrative supervision is carried further than in Great Britain. The result in this country is frequent appeals to the legislature for fragmentary additional powers, and in the interim serious delays and interruption to municipal business. Taking Ontario as an example, of the 150 Acts passed in 1905 no less than 60 applied to municipalities. It is the old problem of the limitations of a written as against the flexibility of an unwritten constitution. The Act

[1] See Biggar's *Municipal Manual*, pp. 595-598. It seems to be good law that a municipal corporation is not responsible for the negligent acts of officers appointed in obedience to an Act of the legislature to perform public services in which the corporation has no particular interest; and when the duties of an officer are prescribed by law and he is not subject to the control and direction of the corporation he is a public officer, and not in any sense a servant or agent of the corporation, e.g., a medical health officer, or a policeman making an illegal arrest (subject to certain exceptions in Quebec province). In the United States, but not in Canada, this rule has been extended to include firemen. The case of a pathmaster or overseer of highways failing to fulfil his duties and thus causing damage seems to stand very near the line.

incorporating the city of Edmonton (1904) marks an interesting deviation from Canadian practice in this regard. Drawn by the editor of *The Municipal Manual* (formerly city solicitor of Toronto), it makes a grant of municipal powers in general terms. "The council may make by-laws," the Act reads, "for the peace, order, good government and welfare of the city of Edmonton, and for the issue of licenses and payment of license fees in respect of any business; provided that no such by-law shall be contrary to the general law of the territories and shall be passed *bona fide* in the interests of the said city of Edmonton." But the granting of franchises, and measures involving the expenditure of money, call for the consent of the ratepayers. It is further laid down that no franchise is to run for longer than 20 years and that 40 years is to be the maximum period for any debenture issue. This Act has been essentially reproduced for the city of Regina (1906). Montreal has a somewhat similar clause in its charter of which it seems never to have taken advantage.

The detailed enumeration of municipal powers rests on the theory of legislative control. Where matters give rise to questions of policy legislative control, or control by statute, is necessary; but in connection with questions of administration the situation is different. First to submit practical problems to the elaborate, often inexpert legislature is a serious interference with the business-like transaction of municipal work. The further effect is frequently felt of such a policy introducing party politics or inter-municipal "log-rolling" into local issues. Of the 60 municipal Acts passed in Ontario in 1905, no fewer than 44 were special Acts; 32 of these concerned business questions and 4 were incorporations. The practice of deciding local business issues by legislative enactment becomes at times even absurd, when in order to save itself the expense of a special Act a municipality is allowed to secure an amendment to the general Act covering the issue involved.

For some years Ontario, which may be taken as a typical province, has been moving slowly in the direction of relief from this situation. It has already a number of expert officials or boards apart from the Legislature to advise on or to supervise municipal affairs. One may instance the provincial board of

health, the provincial auditor (whose powers, however, are not compulsory), the provincial bureau of industries (statistical returns), and the provincial roadmaster. Not long ago the Ontario Municipal Association placed itself on record as favouring the establishment of a comprehensive local government board. Recently (1906) a decided advance was made in the appointment of a railway and municipal board of three members.

The new board is a United States state railway board transplanted with some municipal duties added, a kind of advisory council of the Cabinet and Legislature. It has power to consider and determine agreements between municipal and public utility corporations and to compel their fulfilment; it has also police supervision over the operations of public utility corporations and power to act as mediator in the event of a strike among the employees of such corporations. Appeal from its decision is allowed only with the consent of the court after hearing the evidence of both parties and only on questions of jurisdiction and of law. It superintends the system of book-keeping and account-keeping of all public utilities operated by municipalities, and in its annual report is to include a critical and statistical review of railway and street railway transportation in the province, with suggestions for any advisable changes in railway policy. It hears assessment appeals, doubtless because the most important appeals are those concerning the taxation of public utilities. It determines alterations of municipal boundaries. It replaces the Lieutenant-Governor-in-council in providing or confirming municipal bills relating to public highways and the purchase of public utilities. On request of the Legislature or one of its committees it is to inquire into and report on matters of fact connected with private or special bills affecting municipal interests.

While it concerns itself directly only with a narrow range of municipal subjects, the creation of such a board must be regarded as one of the most hopeful changes in Canadian municipal organization which have taken place for some years. The work entrusted to it is one of great importance. The present limitations on its powers, however, are too artificial to last and must fall away to a considerable extent as its work develops. It may not, as the English local government board does, associate with

itself the provincial board of health, supervise poor law administrations, unite with its own statistics the registration of births, deaths and marriages, or supervise the police system of the province.[1] But it is difficult to see how in arranging for uniformity in the book-keeping of municipally owned utilities and statistical returns it will not feel called upon to provide for uniformity in municipal book-keeping, audit and statistics generally, as is so much to be desired. It is not supposed to be a consulting board on a variety of municipal problems, yet the popular attitude, particularly of rural municipalities, has been leading it from the beginning to act in that helpful capacity. If the board is an administrative success one may expect its natural evolution to help in reconciling wider municipal powers with provincial control.[2]

Permanent Municipal Staffs.—Our municipal governments have been criticized for deficiency in business organization. Clearly their success depends mainly on the standing of the heads of departments and their staffs, and insistence on departmental responsibility. Until councils appoint only the best available ability satisfactory results cannot be expected. The customary standard of salaries paid to officials is low considering the interests at stake. It must be raised if a municipal civil service as the field for a career is to be made possible and if men are to be secured whose services will relieve councils of the infinite details of municipal administration. To-day, in spite of the expansion of municipal business, apart from legal staffs, the payment of a salary of $5,000 is extremely rare even in the two metropolitan cities of Montreal and Toronto. As a result

[1] In every province with the incoming of foreign population a measure of provincial supervision and organization of the police would appear to be growing more and more necessary. The present Ontario system (which may be taken as typical) is a very simple affair. Any crime which a local justice of the peace or a local crown attorney thinks too serious for the rural (county) constable, he reports to the Attorney-General who thereupon, if he thinks it advisable, despatches one or more of his three (!) detectives to the scene of the crime. That outside of the larger towns and cities serious delays in the pursuit of criminals are frequent is not surprising. As for the Dominion Government, it polices the territories, and like Ontario keeps a small staff of detectives ready to follow up matters in which the federal government is particularly interested, e.g., customs, coinage, postal and other matters.

[2] Since March 27th of the present year (1907), the Legislative Assembly requires the board to report on all private bills for consolidating floating debts of a municipality or for renewing municipal debentures. The annual appropriation of $30,000 for the board for all purposes indicates the modest ideas prevailing at its creation.

municipal employment is too often merely a stepping-stone to something more adequately recognized, and local service suffers accordingly.

Mayor and Controllers.—Following the United States, Canada has abandoned the English practice of having the aldermen choose a mayor from among themselves. Mayors are uniformly elected by popular vote, and in most cases hold office for one year, though re-election for a second term is almost usual. Unlike his English prototype the Canadian mayor is frequently elected without having had previous municipal experience.

In Prussia, by way of comparison, it is interesting to note that the mayor (who is always a lawyer) makes municipal government his professional career. He specializes on municipal law and administration, serves his apprenticeship, is appointed on salary by the council as its mayor and co-operates with the departmental officials in taking charge of local business. As his success grows and his fame spreads he is perhaps invited to accept the post of mayor of a larger town, holding his position indefinitely. He is the link between the elected council and the ordinary permanent staff.

But this is not the direction of Canadian development. Efforts to separate legislation and administration have given birth to a so-called board of control of four members elected, like the mayor, by popular vote, but usually thus far from men who have already sat for a certain time as local councillors.[1] Several Ontario cities, and in the west Winnipeg, have such a board, which is Canada's most distinctive contribution to municipal organization. Apparently it has not yet reached its full development. Its work and that of the chairmen of committees clash somewhat. The logical outcome would seem to be a more permanent body of administrators of some kind. Already the controllers in Toronto meet daily; business formerly reserved for committees meeting weekly or fortnightly is frequently submitted to them to be disposed of at once: they are coming to be regarded more as civic officials; soon they will have offices in the city hall, and if their tenure of office is extended they will form to all intents a permanent administrative board.

[1] Initially the board, which originated in Toronto, was made up of the mayor and three aldermen chosen by the council.

In the Acts already referred to incorporating Edmonton and Regina this tendency is again in evidence. In place of a board of control we find a board of commissioners consisting of the mayor and two others appointed by a three-fourths vote of the council. The commissioners can be dismissed only by a two-thirds vote of the whole council; they have charge of assessment, collection of taxes, police, fire protection, and all other public services, property, and works, and submit the annual estimates of expenditure. They constitute a species of board made up of controllers and expert departmental heads in one. The innovation is an interesting instance of government by commission directed by an elective council. The success of the government of Washington, D.C., by a board of commissioners has not been without its influence on Canadian public opinion, but the pressing need for a more business-like municipal organization is the real compelling motive.

Councillors.—In the absence of rigid departmental responsibility councillors must frequently be both field force and general staff, often carrying on a running fight with corporations and private interests whose personal and other influences cannot be despised. They are exposed also to the trials of annual elections (though the number of examples of cities with two and three-year terms, one-half or one-third of the council elected each year) is slowly growing;[1] and withal, at least in cities, their position lacks the solace of social prestige. To some extent the extinction of small wards or the abolition of wards altogether has helped to better the influences under which councillors are elected; but the obstacles to the right class of men offering themselves for the council, as already suggested, are more deeply seated. Too much is expected of them; and the conditions of their tenure of office (yearly elections, etc.), are unfortunate. As a result, speaking generally of the larger towns and cities, the present shows municipal operations of growing magnitude in the hands of men who have not been entrusted with similar responsibilities in any other field.[2]

[1] For example, in 1907 Kingston, Ont., and Sherbrooke, P.Q., inaugurated three-year terms for aldermen.

[2] A judgment debtor may qualify on his wife's property and sit in the council, a contingency that has more than once occurred, and should be provided against.

The Referendum.—Reference of important matters to the vote of the ratepayers or of the electors at large has accordingly come to be an important feature of municipal machinery. The principle of consulting the people is particularly prominent in the Edmonton and Regina Acts already referred to, and almost equally prominent in practice elsewhere. By an Act of the present year (1907) the Quebec Legislature requires that all light, power and street railway franchises for periods of over ten years receive the consent of the electors.

Special Acts of Incorporation (Civic Charters).—As pointed out in the paper on *City Government in Canada,* the practice is so often met with of passing a single general Act for each province in place of special Acts that general Acts must be called an important feature of Canadian local government. Such practice is in line with the trend of legislation in both Europe and the United States. The question of its advantages was recently raised in Toronto by an incipient movement for a special Act. Though the movement miscarried it calls for some reference. The transaction of civic business in Toronto had been frequently retarded by the narrow grant of local powers occasioning frequent appeal to the Legislature for special measures of relief. The real problem is one of wider local powers and should become easier of solution through the evolution of the municipal board. The Edmonton and Regina experiments of a general grant of powers will be instructive in this connection. As is clear from the experience of cities governed by special Acts, charters when once secured are no guarantee against continuous amendment if powers are enumerated in detail. Moreover, special Acts necessarily isolate the individual municipalities in the Legislature and lead to inter-local "log-rolling." They also restrict general interest in municipal amendments and lose the enormous advantage of great legal precision that comes to a general Act through the multitudinous decisions of the courts.[1]

Municipal Ownership.—The industrial province of Ontario is naturally foremost in experimenting with municipal ownership. A return of the provincial Legislature in 1903 shows that 63 municipalities had charge of their own water supply, 39 of

[1] See *The Question of a Charter for Toronto and of Civic Charters in General* by the present writer in *The Municipal World,* January, 1905, p. 8.

their electric lighting, and 3 of their gas lighting; one owns its street railway, one a dock, and another a cemetery. Those numbers must now be greatly increased. Four Ontario towns own their street railways—Port Arthur, St. Thomas, Guelph and Berlin. Outside of Ontario, apart from waterworks, which are usually municipal property, Quebec has at least four municipal electric plants, Alberta three, and British Columbia and Nova Scotia each one. There is a municipal asphalt plant in Winnipeg and in Westmount, P.Q., while one is about to be erected in Toronto. A growing number of municipalities also carry on a local telephone service. In Toronto the mayor sits *ex officio* on the board of the local gas company.

But figures cannot tell the whole story. Popular opinion is very much as it is in the United States, if not inflamed against, at least suspicious of, public service corporations, and inclined to sympathize with programmes of municipal ownership. As outstanding examples one may cite the recent popular endorsation in Ontario of combined provincial and municipal control of electric power from Niagara, and in Manitoba and Alberta of similar control of telephones. Public opinion has doubtless been materially influenced by foreign and domestic investigations of company finance, by the failure of public service corporations to provide for the rapid growth of a number of towns and cities, by the aggressive and unconciliatory attitude of a number of prominent public utility corporations and by the failure of the courts to enforce promptly compacts between them and municipalities. The inability of Montreal and Toronto to cope with their street railway, electric light, and other corporations, has been long patent to the country. Important also is the general recognition of the growing value of public franchises and the eagerness of corporations to secure additional privileges.

Typical in many respects is the situation in Ontario with regard to the development and distribution of electrical energy. A provincial and a municipal commission have each investigated and issued a report covering the Niagara district. The latest and second largest power company, the Electrical Development Company of Ontario, Limited (incorporated by provincial letters patent), with its subsidiary transmission company (with a federal charter), has already expended upwards of $10,000,000

and seemed about to be in a position to dictate terms for power to the country round about. The uppermost question was that of rates. Rightly or wrongly the impression prevailed that tolls would be what the traffic would bear, and no effort was made by the promoters to correct it. Popular vote of interested municipalities overwhelmingly asked their councils to co-operate with the provincial government and see what terms could be arrived at. The companies' directorate urged the discouragement of private capital in Canadian enterprises and the financial risks of municipal ownership. The stakes are too great for the directorate not to modify its attitude and, if possible, come to a frank and reasonable understanding with the government and the public. It would seem that in this event only can a revolutionary step in the direction of public ownership be rendered, for the time being at least, superfluous.[1]

As for Manitoba all Canada awaits with interest the outcome of its telephone policy—public ownership of the trunk lines and municipal operation of the local service. The Alberta government is also contemplating the inauguration of a similar policy.[2]

The history of municipal ownership in England and in America affords an interesting contrast and parallel. English municipal socialism is practically an offspring of theory. Theory shaped the tramway Act of 1871 which almost paralyzed private initiative as regards street car enterprises, and dictated the expropriation clauses of various later public utility Acts which

[1] This is scarcely the place to enter into the interesting details of the companies' organization and financial operations. It need hardly be denied, however, that by securing tenders for electrical energy from more than one Niagara company the Government was threatening the success of the youngest enterprise, much less the security of its bonds. At the present moment the Provincial Government has come to an understanding with the Ontario Power Company for what power it desires. This company stands also willing to erect transmission lines to the various municipalities subject to provincial guarantee of a low rate of interest on the cost, the local distribution to be left to the individual municipalities. The high rates of the Montreal Light, Heat and Power Company in Montreal and district show amply the danger to be expected from unregulated monopoly; and if ever the policy of municipal ownership thrives in Ontario and Quebec as regards electrical energy, private interests will find a reasonable explanation ready to hand At the present moment it would seem that the Electrical Development Company is prepared to come to an understanding with the Ontario Government, the only question being that of terms.

[2] According to the recent (1906) Manitoba statute, should the ratepayers in any municipality so decide by popular vote the municipality is given power to expropriate against compensation the interests of any local telephone system, the government guaranteeing the debentures rendered necessary by the purchase.

checked the development of electrical industries in England for many years. Public utilities were looked upon as safe investments, and the public was to enjoy the profits and reduce its municipal taxes. In America, including Canada, the direct influence of socialistic theory on legislation seems to have been small. Broadly speaking, as far as one may discover a movement for public ownership, it appears to have grown out of the apparent impossibility of controlling public utility corporations. Corporation control by Act of Parliament and the courts has broken down, and not to be baulked public opinion frequently cries aloud for expropriation. Thus theory in England and practice in America have led up to much the same policy.

While it would be easy to over-estimate the significance of the coincidence, a measure of municipal ownership is inevitable either by reason of intractability of local corporations, or on other grounds. Without discussing this aspect of the wide problem, or the merits and demerits of the policy, it may be noted that in practice, judging from English experience, municipal ownership is liable to become to a certain extent an attitude of mind, and that frequently in place of municipal rates falling by reason of earnings in the end they soar. American experience would seem to point for the present not so much to public ownership as to more effective means of regulation and control, to improvement in the machinery of government, a creation of administrative boards or commissions with power to enforce contracts.[1] England has its local government board (with limited powers) and the continent of Europe its close administrative supervision; in Canada Acts of Parliament and the palsied arm of courts of law have been helped out by the appointment of special commissions, temporary or permanent, and of special railway, taxation, municipal and other boards with an experimental range of powers. It has long been customary to point the finger at continental bureaucracy. But continental bureaucracy fell short only because of its irresponsibility. In the various boards Canada appears to be developing a type of responsible bureaucracy. If in this way it is able to secure a fair observance of contracts and fair administration of public

[1] See for example, Meyer, *Municipal Ownership in Great Britain*. New York, 1906; Laughlin, *Industrial America*, New York, 1906, pp. 138, 182, 248.

utilities the impetus to direct municipal operation may be expected to slacken. One ventures to think that the public is concerned more with results than means. An illustration may be found in trade union policy. Based on the wages system trade unionism aims at using its organized force to compel the highest possible wage, leaving to the capitalist the risk and strain of making what profit he can on those terms. In principle it is thus anti-socialistic. Somewhat similarly would it appear to stand with municipalities in their relations with public utility corporations. If this view is correct systems of co-operation with profit (and loss) sharing must be negotiated between the two sides if private enterprise is to be preserved.

The inability of the courts to enforce statutory contracts makes possible still another parallel. Centuries ago courts of equity became possible through the imperfections of the courts of common law; to-day for much the same reason boards of administration are being made necessary. Marsh in his *History of the Court of Chancery* says: "The existence and continuation of [courts of equity] was rendered necessary by the technicality of the common law judges, by their strict adherence to form and precedent, by their inclination to follow what they understood to be the strict letter of the law, no matter how absurd or unjust the results might be, by their unwillingness to mould the doctrines and practice of the common law to meet the exigencies of the times, and their unwillingness to afford new forms of legal relief in cases and combinations of circumstances which had not been foreseen and provided for by the early fathers of the Common Law." These words seem to have a remarkably modern application. At least it is some such situation that is to-day making the extension of governmental machinery the only way out of a frequently perplexing and intolerable situation.

In Canada difficulty in controlling corporations is not, of course, the only explanation of any inclination towards public ownership. Many other influences play a part—the coming of new municipalities and the rapid growth of others, chances for profit-making, and local anxiety for public services in advance of private initiative. In Ontario municipal activities have advanced far enough to lead the provincial minister of finance in a recent budget speech to issue a note of warning against the rapid swell-

ing of municipal obligations, which the passing stringency in the world's monetary markets is emphasizing.[1]

There can be little doubt that present-day demands on public utility corporations are greater than ever, that the public expects more and is more exacting than a short time ago. At times, perhaps, it demands a higher quality of service than was usual or in mind at the time it made its contract. On the other hand, the outstanding peculiarity of corporative organization—the weakened sense of personal responsibility—is answerable for a great deal. This unfortunate characteristic is further fortified by the quasi-monopoly which organized capital holds particularly in a young country like Canada. The situation certainly demands foresight, firmness and patience. Looked at from the point of view of local governmental machinery perhaps we come nearest the heart of the problem when we say that we have continued overlong to apply ideas and methods suited to the day of small things.

Taxation.[2]—The most important change in the difficult field of municipal taxation has been the widespread substitution of either the rental tax or the business tax for the tax on personalty. In their own defence, it must be acknowledged, municipalities were compelled to make the change. Although the wealth of the country expanded, income and personalty assessments remained much as before or fell. Personal property seemed to shrink and vanish at the approach of the assessor, while municipal expenditures steadily grew. In British Columbia municipalities are not permitted to assess income or personalty; in Quebec, Manitoba, and some of the cities of the new provinces, a rental tax is levied. In Ontario the rental tax assumes the form of the business tax and a local tax commission

[1] The interesting and important question has been raised in the Ontario Legislature, whether municipalities should not be compelled to charge rates sufficient to cover costs of operation and maintenance. No municipality appears to allow loss in taxable property as an item of cost. In Toronto the water rates do not provide for maintenance or necessary extensions and fresh debentures are accordingly necessary from time to time.

[2] See the reports of the Ontario Assessment Commission, the Ontario Railway Taxation Commission, and the St. John City Tax Commission. Acknowledgment is due to Mr. James Forman, Assessment Commissioner of Toronto, and Mr. K. W. McKay, member of the late Ontario Assessment Commission, for a number of helpful suggestions on matters discussed in this section.

has recently proposed a similar change for the city of St. John, N.B.

The new business tax in Ontario calls for special mention. In that province prior to 1904 land, buildings, income and personal property were assessed. The Act exempted the personal property of banks (money, notes, accounts receivable, etc.), as also generally debts due against stock. The result was that when the assessor called too many either owed the bank or had some other qualifying indebtedness. Adding to this the usual percentage of fraudulent returns the net results were highly unequal, unjust and unsatisfactory. In fact during the decade 1880-90 the total assessment of personalty for the province instead of increasing actually decreased over three-quarters of a million dollars and taxable income over two and a half millions. Accordingly to check this untoward decline the new Act replaces the assessment of personal property by a special levy on realty under the name of "business assessment."[1] To make assessments as specific as possible land and buildings are to be valued separately—a practice long followed in Toronto. A new method, however, is adopted of arriving at the value of buildings. In place of selling value the criterion for assessment is to be the increased value the buildings give to the land—"the amount by which the value of the land is thereby increased." As under certain conditions land may be more valuable without any buildings, the precise meaning of this new clause will remain in doubt until cleared up by the courts or amended.

The business tax aims primarily at facilitating assessments rather than at increasing the public revenue; at preventing the possibility of fluctuating and arbitrary valuations, and at removing the reproach attached to fraudulent returns. It seems to have been suggested by the report of a New York tax commission of 1870 and subsequently. It was arrived at in the following manner. A table was drawn up showing the total personalty assessment for the whole province classified according to occupations and professions (e.g., retailers, wholesalers, departmental stores, manufacturers, distillers, public utility corporations, financial institutions, professional men, etc.). A second

[1] Section 36 of the Ontario Assessment Act gave municipalities power to enforce a rental tax, but it was never taken advantage of.

table showed the realty assessment for each of these classes. The problem was to find for each class what percentage of its realty assessment would equal, and therefore give the same revenue as its old personalty assessment. Thus it was found that if retailers in large cities paid the ordinary tax rate on 25 per cent. of their realty assessment, they would be paying as much as they paid formerly as personalty tax. Their business assessment was accordingly fixed at 25 per cent., that is, 25 per cent. of their realty. For distillers it was found to be 150 per cent.; for wholesalers, 75 per cent.; for manufacturers, 60 per cent.; for departmental stores, 50 per cent.; the same rate also for professional men, etc. Smaller municipalities found it necessary to vary their percentages somewhat to suit local financial requirements, e.g., 30 and 35 per cent. for retailers, etc. The minimum assessment is fixed at $100, which is equivalent to a species of trade license.

The following points will be noted. Though the primary aim of the business tax is improvement in the system of assessment, it does increase revenue by not allowing any one to escape taxation.[1] The number of individual assessments now far exceeds that under the old Act. To this extent it makes for equality; but in so far as the old personalty assessments, on which the present tax is based, were inaccurate, the existing tax perpetuates the inaccuracy. The question at issue is whether the percentages of the realty assessment of the different classes of business represent their net earning power or income. From this point of view the present system can be looked upon only as tentative and experimental both in the more or less arbitrary classification of business and in the relative percentages adopted. For the time being by making realty the basis of assessment the actual effect of the new tax is to reduce the burden on those who formerly were honest enough to pay a high personalty tax, and to increase it on the man who successfully dodged his personalty taxation. Being based on realty values, the new tax is more elastic than the old, growing with the wealth of the community. On the other hand, during periods of trade depression when stocks are light it is quite conceivable that it would not fall

[1] Railways alone are not subject to the business tax but to a special provincial assessment.

correspondingly. As long, however, as assessment is comparatively low, as it is at present, there is small likelihood of appreciable hardship.

The tax is not a rental tax such as exists in Montreal, Quebec, Winnipeg, Edmonton, Regina, etc.[2] The rental tax was actually recommended by the Ontario Tax Commission but rejected by a special committee of the Legislature in favour of the present basis partly for technical reasons, the business assessment being made more readily, besides allowing of greater simplicity for the taxpayer. Rentals are used only as guides in estimating sections of buildings, such as offices. The commission also suggested that the business tax be supplemented by a house tax corresponding to the business assessment. This was omitted in the final draft. The St. John tax commission, in its proposed system for St. John, reverts to the inclusion of the house tax.

Manufacturing and farming machinery are exempt, but the plants of utility corporations are taxed in order to get approximately the same revenue from them as before. Railways, by a later amendment to the Act, are assessed by the province and the revenue divided, as already explained, between the province and municipalities. Some objection has been made to railway assessment being made only every five years; but for practical purposes quinquennial assessment probably answers the needs of the case as well as can be expected at the present moment, especially as this is the first instance of systematic railway taxation in the Dominion.

Employers must make returns of the income of employees. This is an important new provision which secures greater accuracy and equality. Telegraph and telephone companies are also to make certain specified returns to the province. The assessment commissioner of Hamilton reports that the power given to compel both employer and employee to make returns "has resulted in such additions as almost stagger one."[1] The logical suggestion may be made that, similarly, trustees should be required to give returns of beneficiaries. In the income

[1] In Manitoba the *Act respecting the Taxation of Personal Property in incorporated Towns and Villages*, 1906, introduces the business tax. It is to be brought into force only by proclamation of the Lieutenant-Governor-in-council with respect to specified municipalities. So far about a half dozen municipalities have adopted the Act.

[2] *Canadian Municipal Journal*, Sept., 1905, p. 275.

assessment the chief change is the exemption of $1,000 for householders and $600 for non-householders. When an income tax is paid allowance is made for business assessment in places of over 5,000 population. Thus a lawyer with a gross income of $2,500 (of which $1,000 is exempt) and a business assessment of $1,000, pays on 25 per cent. of his $1,000 as business assessment and on an income assessment of $1,250 (this being $1,500 less $250). Some discrimination is shown against incorporated companies by their officials being assessed on income, while officials of non-incorporated companies are passed over. A bill rectifying this inequality is before the Legislature. It may be added that there is no franchise tax in force in Canada.[1]

It will not be denied that the new tax is a great improvement on the old one. Yet one is given to understand that better results might have been, and still might be, obtained if local councils recognized more adequately the value of expert assessors. High salaries seem to be the bugaboo of municipal government. Yet it is admitted that authoritative men can get higher assessments and create less irritation than lower priced officials. One can gather an idea of conditions when it is remarked that in Toronto, which may be taken as fairly representative, the salaries paid to assessors run from $1,200 to $1,500, only one of the eight assessors at present employed receiving the higher sum. If men at high salaries be not employed on the regular staff, the suggestion has been made that an authoritative assessment be undertaken at least once every five years, by which means the basis of values could be fairly well maintained.

The Franchise.—Although the Ontario Act assesses incorporated companies, it deprives them of the franchise. At the drawing up of the Act it was argued that the advantages of incorporation offset the disadvantages of inability to vote; but such an argument is not consistent with the theory of representation. The great majority of businesses, even of a personal nature, are being incorporated, and in the larger towns the growth of apartment houses completes the disenfranchisement

[1] The income tax seems to threaten to annihilate the statute labour tax. In Toronto it has not been levied for two years as the expenses of collection were greater than the yield, and the income and other assessments seemed to answer the purpose.

of a great number of the stockholders who would otherwise qualify as freeholders. If the referendum on money by-laws is to be preserved as a reality and not made a fiction, contributors to the municipality, whether incorporated or not, should be given a voice in the expenditure of their taxes. The Edmonton Act not only enfranchises corporations (as does also the Regina Act), but allows each burgess one vote for an assessment up to $599, two for one of $600 up to $1,199, and three for one of $1,200 and upwards, besides giving him the right to vote in each ward in which his name appears on the voters' list.[1]

Municipal Co-operation.—The number and importance of matters in which municipalities have common interest are rapidly growing—sanitation, good roads, telephones, electric railways, electric power, the widening and consolidating of public utility enterprises, etc. The new municipal situation that this is creating has resulted in municipal associations of various kinds for discussion and co-operation.

The Ontario Municipal Association dates from 1894. There is also a minor body called the Ontario Rural Municipal Association of younger date. In 1901 with a charter representation of 52 towns and cities came the Union of Canadian Municipalities formed on the model of the National Municipal League of the United States. It was one result of the futile struggle in the Quebec Legislature against the Montreal Light, Heat, & Power Company's bill, and in Ontario of the fight against the Bell Telephone Company for control of the streets. The Union has branches now in Nova Scotia, New Brunswick, Saskatchewan, Alberta, Manitoba, and British Columbia, and a federal organization with all the provincial associations is being considered. Both the Union and the Ontario Association are supported by creditable monthly journals (*The Canadian Municipal Journal* and *The Municipal World,* respectively), which add materially to their usefulness.

Uniform Municipal Book-keeping, Reports and Statistics.—If publicity is a safeguard of public institutions, satisfactory systems of book-keeping and reports are essential. At the present

[1] In British Columbia by amendment of 1900 to the Municipal Clauses Act a three-fifths majority is required when a by-law is submitted to the electors; similarly in Ontario as regards local option on liquor licenses.

moment throughout Canada there is the greatest diversity in the method of municipal book-keeping, reports and statistics. In Ontario a form of municipal accounts is prescribed for rural municipalities and also for public utilities operated by municipalities. But for towns and cities there is no uniformity of accounts in Ontario or elsewhere. As a result one need only remark that the returns made by smaller places show little improvement on the simplest classification of a small shop-keeper. It is highly desirable that the provinces should come to an agreement providing for uniform municipal book-keeping throughout Canada, independent accounts for municipal enterprises, adequate reports and full statistical returns.[1] Without identical systems of book-keeping and satisfactory tabulations by the provincial governments, inter-municipal comparisons are practically impossible. The same remark may be made of summaries for the whole country, which as time goes on will become more and more desirable. The time has come, moreover, when statistical returns to the province should not be confined to municipal enterprises, but should include returns from all public service companies after the model of those now submitted by insurance companies. Since this was written the 1907 convention of Canadian Municipalities, with this end in view, has passed a resolution which will be presented later on to the various provincial governments.

The lack of satisfactory departmental reports is another matter calling for reference. The present situation is characteristic of the system under which one finds comparatively little definite professional responsibility on the part of the heads of departments and a minimum of intermunicipal comparison.

Standardization of Debentures.—Their growing importance demands that more attention be given to municipal securities. Sometimes printed, sometimes typewritten, now and then penned on foolscap of all sizes, municipal debentures are frequently prejudiced by their very appearance. Moreover, the inconvenient amounts in which they are issued and the neglect to arrange for payment of coupons at some financial centre, frequently cost municipalities dear. A considerable number of On-

[1] See the model municipal report as proposed by the National Municipal League of the United States in "A Municipal Program" (Macmillans, 1903).

tario municipalities use a set form for their debentures. But a standard form for all municipal debentures would seem advisable. To this might be added a measure of supervision by the provincial auditor, as is done, for instance, with school debentures in Manitoba and the new provinces. The purpose there is to see that all legal provisions have been complied with, without making the province in any way legally responsible. Sections 129 and 130 of the School Ordinance of the North-West Territories at present in force read as follows:

(129) "Every debenture before being issued shall be sent for registration to the commissioner [of education] who shall cause a proper record to be kept of the same.

(130) "The commissioner shall thereupon if satisfied that the requirements of this Ordinance have been substantially complied with and if the authority to make the loan has not been withdrawn register and countersign the debenture, and such countersigning by the commissioner shall be conclusive evidence that the district has been legally constituted and that all the formalities in respect to such loan and the issue of such debenture have been complied with and the legality of the issue of such debenture shall be thereby conclusively established and its validity shall not be questioned by any court in the Territories, but the same shall to the extent of the revenues of the district issuing the same be a good and indefeasible security in the hands of any *bona fide* holder thereof."

Competent authorities urge that the effect on the market for municipal issues would be most beneficial and the expense involved small.

Such appear to be the more important of Canada's present municipal problems. A number of the conclusions come to are in accord with the practice already followed in one or more localities. Recapitulating them we find advisable in each province: (1) A single Act governing municipalities with a less specific, and therefore a wider, grant of local powers than has been customary. (2) An expert municipal board for purposes of supervision and of consultation by both Legislature and local councils. (3) Uniform municipal book-keeping, full statistical returns from municipalities, as also from all public service corporations, and a compulsory provincial audit. (4) A standard

form for municipal debentures, together with a measure of supervision by the municipal board. (5) At least in the larger municipalities a longer term of office for councillors, part of the council retiring each year, and the further development of a board of commissioners or board of control. (6) Greater attention to the qualifications of heads of municipal departments, to their professional responsibility and to the quality of their reports. (7) Extension of the municipal franchise to incorporated companies.

The scope of municipal work is steadily widening. Here the student of history on the watch for precedents may discover a recurrence of mediævalism, of a time when the town was the forerunner of the nation; though from the point of view of public services the modern municipality is far and away in advance of its mediæval precursor. It is creating a new world. This tendency towards greater municipal activity is common to both Europe and America. Hence of recent years on both continents municipal government, which ministers to the everyday wants of the people, has entered a fresh stage of development. As a school of democracy the standards of efficiency it holds up are bound to do much towards shaping ideals for the wider fields of political life. It means business before politics.

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ADDENDA

City Government in Canada, p. 9.—The qualifications of municipal voters in British Columbia are now practically identical with those in the other provinces.

Municipal History of Manitoba.—The city of Winnipeg is about to spend upwards of $3,500,000 on improving its water supply, and upwards of $600,000 on perfecting its gas supply. Pursuant to a recent vote street cars now run on Sunday. Through an inadvertence it was stated that the street railway derives its motive power from the Assiniboine River. Its power is drawn from Lac du Bonnet, about fifty miles distant, where there are some extensive falls capable of generating a great deal of power.

Ontario precedent has been followed in the provision for a Board of Control for Winnipeg consisting of four controllers with the mayor as chairman, elected annually by the city at large. The mayor's salary is not to exceed $5,000, a controller's $4,000. In particular the Board is required to prepare and present to the council estimates of proposed expenditures, prepare specifications and award all contracts on behalf of the city; report to the council monthly or oftener upon all municipal work under way, and suspend or dismiss any heads of departments. The council by majority vote may overrule the Board, refer back or add to its recommendations. In case the head of a department is dismissed a two-thirds vote is necessary to reinstate him.

As regards public interest in civic government it may be said that widespread dissatisfaction with the municipal council resulted in a successful campaign to secure representative candidates for seats in the council.

The municipal commissioner issues a summary of *Statistical Information respecting the Municipalities of the Province,* showing the total assessment, taxes and debenture debt. Mention may also be made of the recent report of the *Public Parks Board,* giving an historical account for the years 1892-1905.

North-West Territories.—The new province of Saskatchewan appointed a commission to suggest a municipal organization for

the province. Separate Acts are recommended for cities, towns and villages (which must have respectively populations of 5,000, 500 and 75). Buildings and improvements are assessable at not more than 60 per cent. of their value, and incomes up to $1,000 are exempt. The general grant of municipal powers in the Edmonton and Regina Acts is provided for, as are also uniform municipal book-keeping, and a compulsory annual audit by a provincial auditor. Aldermen are elected for two years, mayors for one year. Formerly, villages were under overseers; they are now under elected councils of three members. Rural organization consists of municipalities 18 miles square (nine townships), there being no provision for townships or counties. All municipalities will be numbered, but may be given names. Each municipality is administered by a council of six councillors and a reeve, elected yearly. Everyone occupying for not less than six months or owning not less than 140 acres within the municipality is entitled to vote. Compulsory uniform system of municipal accounts and provincial audit is provided for in this class also. A number of western towns are endeavoring to work out a system of local government by means of commissioners and an elective council. It is too soon to look for definite results. Thus far public sentiment has not leaned towards restricting the municipal franchise. In one city the right to vote for mayor and aldermen is extended to those who have paid a dog-tax of $2.00, and it is said that six women recently voted on their common property in a single dog, while another took out a license for a china dog upon her mantelpiece.

Present Conditions.—The Supreme Court has just handed down an important decision that any corporation incorporated by a province has power to transact business in any other part of Canada.

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